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Schmitt's "Testament" and the Future of Europe

Paul Piccone and G.L. Ulmen

Carl Schmitt on: EUROPEAN JURISPRUDENCE

Simon Clarke:	The Crisis of Fordism?
Alain Policar:	Racism and its Mirror Images
Pierre-André Taguieff:	Cultural Racism in France
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Schmitt's "Testament" and the Future of Europe

Paul Piccone and G. L. Ulmen

The Changing Character of European Unification

The new Europe has its roots in an old project. Far from being fixed once and for all, however, it has been constantly changing. Toward the end of WWI, when the devastation of the conflict rekindled interest in internationalism and a universal language adequate to it, Gramsci pointed out that most of the arguments for and against Esperanto were actually beside the point. Major cultural and political shifts, such as the adoption of a universal language, do not come about because of their "desirability," but only if and when they become necessary as a result of the intensified interaction of nations and cultures.[1] The same could have been said of similar projects, such as the League of Nations after WWI, the United Nations after WWII, and can be said today of European unification. Seriously discussed since the closing phases of WWII, European unification was concretely launched in the late 1950s with the formation of the European Economic Community. Now it is being completed largely as a result of the economic pressures of a rapidly expanding world market and the political imperatives dictated by the growing obsolescence of the sovereign state. Concurrently, conditions for a new international order are also beginning to mature.

As Schmitt pointed out almost half a century ago, the sovereign state that had been the foundation of the Eurocentric order of international

1. Antonio Gramsci, "Universal Language and Esperanto," originally published in *Il Grido del Popolo* (February 16, 1918), now in Paul Piccone and Pedro Cavalcanti, eds., *History, Philosophy and Culture in the Young Gramsci* (St. Louis: Telos Press, 1975), pp. 29-33.

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law for almost 400 years began to decline as a result of the disappearance of the qualitative distinction between state and society after 1848.[2] This signalled the approaching end of that international order, the *jus publicum Europæum*, which began to dissolve at the close of the 19th century. International relations were losing their Eurocentric character as a result of the rise of Russia and the US as super-powers and the internationalization of the economy: "Over, under, and beside the boundaries of what appeared to be a purely political and international law between states spread a free, i.e., non-state economic sphere permeating everything: a world economy."[3] This development went unnoticed, particularly by jurists, at that time mired in the myopia of legal positivism. But it was discussed extensively by bourgeois political economists such as Hobson, Sombart and Schmoller, and Marxists such as Hilferding, Luxemburg and Lenin. It eventually determined the change from colonialism to imperialism and, within Marxism, contributed to the split into social democracy and Marxism-Leninism. The decisive turning point was WWI — a war which began as a typically European conflict between sovereign states and ended as a world war or, more precisely, an international civil war, with the entrance of the US into the conflict.[4] The first major challenge to the Eurocentric order of international law began early in the 19th century with the Monroe Doctrine, which not only sought to isolate the "Western hemisphere" from Europe and the rest of the world, but opposed to it a new geopolitical form — what Schmitt called a *Grossraum*, i.e., a supra-state sphere or bloc.[5] At that time, the US was faced with a choice between a pluralism of *Grossräume* and universalism.[6] Because of strong isolationist sentiments,

2. Schmitt's analysis of this process began with his 1927 lecture on "Der Begriff des Politischen," now in Carl Schmitt, *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles 1923-1939*, second edition (Berlin: Duncker & Humblot, 1988), pp. 67-74. See also, Carl Schmitt, *The Concept of the Political*, trans. by George Schwab (New Brunswick, NJ: Rutgers University Press, 1976).

3. Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europæum* (1950), second edition (Berlin: Duncker & Humblot, 1974), p. 208.

4. See particularly, Carl Schmitt, *Cambio de Estructura del Derecho Internacional*, republished as a pamphlet from *Revista de Estudios Politicos*, Vol. V (Madrid: June 1943). See also Carl Schmitt, *Die Wendung zum diskriminierenden Kriegsbegriff* (Munich: Duncker & Humblot, 1938).

5. See Carl Schmitt, *Völkerrechtliche Grossraumordung* (1939), fourth edition (Berlin, Leipzig and Vienna: Deutscher Rechtsverlag, 1941). Cf. G.L. Ulmen, "American Imperialism and International Law: Carl Schmitt on the US in World Affairs," in *Telos*, No. 72 (Summer 1987), pp. 43-71.

6. See particularly, Carl Schmitt, "Grossraum gegen Universalismus" (1939), in Schmitt, *Positionen und Begriffe*, *op.cit.*, pp. 295-302.

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however, this choice was left in abeyance until WWI, when Wilson set aside the original intentions of the Monroe Doctrine and began advocating a universalist project. In the wake of the Russian Revolution, Lenin launched another universalist project, thus setting the stage for the struggles that have disrupted most of the 20th century and have resulted in postponing the development of a new international order.

In attempting to reconcile what at that time was irreconcilable, both Wilsonianism and Leninism gradually deteriorated into pseudo-universalist projects doomed to failure: the former into American imperialism, by seeking to cynically impose democracy (by means of the League of Nations, which the US dominated); the latter into a covert form of Russian nationalism, by pretending to keep alive world revolution well after the revolutionary wave had ebbed, using such pseudo-international organizations as the Comintern or dubious theoretical epicycles such as Trotsky's "law of uneven and combined development." The League of Nations itself became the pseudo-universalist project *par excellence*. Constituted essentially as an international legal system, it specifically sought to legalize the proper grounds for a "just" war. This fundamentally changed the very concept of war that had made possible the *jus publicum Europæum*. Instead of the *justa causa* of the old religious civil wars, which presupposed the demonization of the enemy, international law in the *jus publicum Europæum* was based on the concept of the *justus hostis*, the legitimate enemy understood as an equal adversary defending valid claims, whereby every war between equally sovereign states was legitimate. Efforts to deploy a universalist system at the end of WWI reintroduced the earlier discriminatory concept of war. Once again, war was defined as a struggle between good and evil, and it became impossible to recognize the other side as an equal. This led to the criminalization of the enemy, who became a *foe*.[7] As an ecumenical world order, the League of Nations claimed to be able to distinguish between "just" and "unjust" wars, or even whether countries were in fact at war. What ensued was not a new world order, but an incoherent series of treaties, attempts to establish war guilt, reparations and the like, all of which meant that the *jus publicum Europæum* no longer obtained and that nothing concrete had taken its place.

The political ruins left behind by the failure of the League in the form of a revived American isolationism and Stalin's "socialism in one

7. For an extensive discussion of these concepts, see G.L. Ulmen, "Return of the Foe" in *Telos* 72 (Summer 1987), pp. 187-193; and George Schwab, "Enemy or Foe: A Conflict of Modern Politics" also in *Telos* 72, pp. 194-201.

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country" prevented the achievement of a stable post-war settlement. Crucial issues, such as the growing obsolescence of the state, went unresolved, paving the way for movements such as fascism and Nazism, which eventually precipitated WWII. Shortly after renewed attempts to create a world order with the United Nations in 1945, the Cold War generated a bipolar world characterized by an intensified confrontation of the two pseudo-universalist projects embodied in US and Soviet ideology that had earlier prevented the constitution of a new pluralist international order. Thus it is not surprising that when the project of European unification was concretely placed on the political agenda with the Treaty of Rome (1957), it could not avoid being prefigured in terms of the prevailing division of the world, i.e., as a social-democratic "third way" mediating between the two major economic and political systems.[8]

Today, the sudden end of the Cold War as a result of the collapse of the Soviet Empire means that one of the most fundamental geopolitical factors determining the character of the European unification project no longer obtains. The irreversible delegitimation and decline of "really existing socialism" as a bureaucratic centralist system has fueled already widespread doubts concerning the viability and desirability of the massive regulatory state administrations that have been grafted onto self-regulating market-based Western societies since at least the Progressive Era and the New Deal in the US, and since Bismarck in Europe. Thus the social-democratic character of the original project of European unification is becoming increasingly problematic and, in all likelihood, will give way to a decentralized federalism. The widespread popularity of the project *as such* is thus misleading in that indeterminacy concerning many of its essential features conceals major unresolved political differences regarding its future character. Even if the grandson and namesake of Gramsci's old capitalist nemesis — the present chairman of FIAT — Giovanni Agnelli, supports it wholeheartedly, it does not mean he does so for the same reasons as his political opponents. For him, the current effort to unify Western Europe "is not so much the result

8. In response to the Eurocommunist project in the 1970s, Schmitt pointed out that the state was more alive and necessary than ever because it had become "the agent of legality, which brings about this miracle of a peaceful revolution. The revolution in turn legitimizes the state as a reward for bringing about a legal revolution." This attempt to instrumentalize the state for revolutionary ends, however, was not just another indication of its growing obsolescence, but also an indication of the pseudo-universalism of the Marxist revolutionary project seeking to survive by tying its project to the particularisms of the old international order. See Carl Schmitt, "The Legal World Revolution," in *Telos* 72, *op. cit.*, p. 73.

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of a utopian dream as it is the political recognition of economic reality; the reality of global markets, the reality of economic interdependence, and the reality of competitive pressures."[9] Here one does not have to be Gramsci's grandson to interpret this over-emphasis on "economic reality" — what originally gave rise to the Common Market — as an effective decoy meant to help deploy, within the broader context of a unified Europe, the functional equivalent of a Thatcherism or Reaganism that has hitherto been politically unfeasible at the Italian national level, i.e., the elimination of bothersome domestic regulations and other restrictions to the unhindered flow of multinational capital.[10] Similar political motives behind the rhetoric of those who emphasize "political reality" can also be seen as a way to institutionalize a fully-developed social-democratic model that has proven difficult to implement uniformly in other European countries.[11]

Reformulated in the early 1980s, more recent plans for European unification still prefigured an autonomous new power-bloc within the post-détente context of a Cold War rekindled by the Soviet invasion of Afghanistan and Reagan's military Keynesianism. As in the original Treaty of Rome, these were essentially meant to maximize the economic advantages and political liberties of Western capitalism, while retaining the "socialist" ideals of economic equality and social welfare of "really existing socialism." The sudden collapse of Soviet-type communist regimes in the wake of Gorbachev's acknowledgment that the increasingly wasteful and inefficient economic performance of command economies is irreversible and therefore in need of radical reform, and the equally sudden move to reunify the two German states as a result of the dissipation of East Germany's sole *raison d'être* — the development and articulation of a radically different social, economic and political system[12] — have redimensioned substantially the project of European unification. The consequences are not limited to a merely superstructural *political* sphere. In addition to turning the project away from its earlier social-democratic configuration to an administratively decentralized

9. Giovanni Agnelli, "The Europe of 1992," in *Foreign Affairs*, Vol. 68, No. 4 (1989), p. 62.

10. See Edgar Pisani, "L'indéchiffrable Europe," in *L'Événement Européen*, Nos. 9-10 (April-June 1990), pp. 11-20.

11. See Mario Telò, "The SPD: Between Europe and *Modell Deutschland*" in *Telos* 80 (Summer 1989), pp. 127-137.

12. For three accounts of the history and dynamics of these events, see Walter Süß, "East Germany's Defensive Politics," in *Telos* 79 (Spring 1989), pp. 163-180; Sigrid Meuschel, "The End of 'East German Socialism'," in *Telos* 82 (Winter 1989-90), pp. 3-26; and Jack Zipes, "Reunifying Germany," in this issue of *Telos*.

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federalism, these new developments have major *social* and *cultural* implications. They also create the political preconditions for a new post-industrial system variously described as "post-Fordism," by regulation theory, flexible specialization, etc.,[13] which for the past two decades has already been gradually displacing the so-called "Fordist" model — a model inextricably rooted in central planning and the totally administered society. Far from solving all industrial problems, however, the new model creates new social conditions conducive to intensified nationalist/ethnic/racial conflicts resulting from the increasingly heterogeneous demographic composition of the various countries constituting the European community.[14]

The gargantuan concentration of labor, capital and resources into mass-production factories, sharply separating an increasingly deskilled labor force and a management seeking to control all features of the labor process, was not a neutral technological imperative but a key requirement of the central planning system of both over-bureaucratized state socialism and its counterpart, oligopolistic capitalism. Within a decentralized federal system, this industrial model, historically associated with environmental irresponsibility, homogenization of producers and consumers, as well as "the plastic lifestyle" fostered by the culture industry, is likely to be displaced by a new system characterized by a myriad of much smaller autonomous units, where the separation of labor and management is no longer very sharp, quality becomes crucial, and the possibility of greater product diversity allows for better responsiveness to an increasingly fragmented market. This is not due to oligopolistic capital's sudden discovery of social responsibility, but to the need to remain profitable. A tendentially declining profitability in advanced industrial societies (not because of the mythological Marxist

13. For a critique of post-Fordism, see Simon Clarke, "The Crisis of Fordism or the Crisis of Social Democracy?" in this issue of *Telos*. Clarke points out how these allegedly new industrial models are by no means new and, at best, represent different ways of managing the "permanent" crisis of capitalism. Contrary to his enthymematic assumption concerning the possibility of a conflict-free socio-economic system, however, the so-called "crisis" of capitalism is actually the precondition for economic growth and internal self-regulation, without which the system would not only stagnate but tend towards involution. The very same capitalist crisis of the 1950s and 1960s can be interpreted as having been triggered not by working-class conflictuality, as does Clarke, but by its decline under the fine-tuning of welfare state management. See Paul Piccone, "The Crisis of One-Dimensionality" and Tim Luke, "Culture and Politics in the Age of Artificial Negativity," both in *Telos* 35 (Spring 1978), pp. 43-72. In both articles, however, the crisis is seen as one of social democracy or its equivalent.

14. See Alain Policar, "Racism and its Mirror Image," and Pierre-André Taguieff, "The New Cultural Racism in France," both in this issue of *Telos*.

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law of the falling rate of profits, but as a result of growing international competition by developing countries) can be reversed by eliminating the wastefulness engendered by large, unwieldy industrial organizations incapable of making full use of that personal initiative and creativity without which all formal systems are necessarily doomed to internal involution. This is related to the obsolescence of the centralization of the production process resulting from its rapidly falling profitability owing to the inefficiency engendered by the decline of central planning and its concomitant strategy to standardize production and distribution while eliminating all internal opposition. As it turned out, the latter development also entailed the elimination of all creativity. Within a decentralized federal context, the unintended by-product of the so-called Fordist model, i.e., the creation of a small but highly skilled new work-force (composed of tool-makers, new craftsmen, etc.) necessary to mediate the deskilling of the production process and the concentration of control prerogatives in management's hands, becomes the basis for an industrial decentralization predicated on an even greater centralization of capital.[15]

This mode of industrial reconstruction, however, entails new and unanticipated social conflicts. The marginalization of previously disruptive labor conflicts does not *ipso facto* usher in a conflict-free system. Residual labor and class conflicts typical of the Fordist phase of capitalist development turn into cultural ones as a result of declining birthrates in Western societies and the growing importation of labor-power from the Third World or from the remnants of the Soviet Empire. Such a fortuitous predicament provides diminishing native populations considerable opportunity for upward social mobility even during periods of relatively slow economic growth. This same promise of eventual upward mobility subsequent to social integration renders the otherwise miserable lot of immigrants merely temporary, thus considerably more bearable. In the interim, however, since the only means of

15. Clarke's argument against the possibility of this sort of organizational development contradicts his earlier convincing claim that industrial rationalization is never brought about merely by technical innovations but by social and political imperatives. If the industrial decentralization postulated by "flexible specialization" is, in fact, not only already technologically feasible (as demonstrated by the experience of Emilia-Romagna and Baden-Württemberg) but politically desirable from the viewpoint of relaunching capitalist profitability while at the same time guaranteeing social harmony, then it does not make sense to dismiss it, as Clarke does, purely on technical grounds that it may not be able to deal with mass production — something which can always be worked around. What is crucial is the presence of a strong capitalist political will and foresight.

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effectively resisting hardships associated with this social integration are the resurrection of fading but still strong cultural particularisms, cultural fragmentation is likely to remain a significant feature of a federated Europe at least for the foreseeable future. This means that traditional labor and class conflicts tend to give way to racial, ethnic and religious politics, creating internal disruption even more severe and difficult to mediate than traditional labor conflicts. Within the context of a centralized managerial regime, ethnic, religious and racial conflicts usually end up mediatized within a corporatist framework which rules out any permanent solution but, rather, intensifies their original preconditions by sharply separating the various groups. These same conflicts become considerably more manageable within the informal structures of a decentralized "post-Fordist" system where "otherness" is not ascribed through the external mediation of bureaucrats and academics, but is constantly reconstituted or erased in everyday life.

While losing its attractiveness for what, in relation to the rest of the world, is a socially and economically healthy unified Europe able to restructure production and contain the resulting new conflicts, the rapidly ageing social-democratic "third way," along with obsolete technologies and mass commodities, is being increasingly relegated by default to a post-communist East. During the extremely painful transition from bureaucratic centralism to a more rational market-oriented system, difficulties encountered in eliminating recalcitrant socialist bureaucracies and gradually phasing out expansive paternalistic welfare measures necessitate some form of transitional social democracy. This predicament, however, is likely to render the countries involved even more internationally non-competitive than they have already become as a result of "really existing socialism." The outcome can only be a plunge into what Ivan T. Berend calls an "unending dark tunnel of thirdworldification,"[16] thus further eroding whatever welfare system was to be safe-guarded and intensifying a wide variety of internal conflicts.

Western Europe seems headed towards a 1992 characterized by what some of the more astute Left critics, such as Régis Debray, bemoan as a "liberal reality" hidden behind a "socialist rhetoric"[17] prefiguring a

16. See Berend's contribution to the discussion, "L'après-communisme: une troisieme voie," in *Le Débat* 59 (March-April, 1990), p. 11. A similar analysis can also be found in the "Introduction" to "*Perestroika* in Eastern Europe," special issue, *Telos* 79 (Spring 1989), pp. 2-8.

17. Régis Debray, "Europe, quelle réalité pour quel mithe? Entretien avec Franck Lepage," in *Lignes* 9 (March, 1990), p. 39.

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technocratic future of free-flowing international capital, i.e., a Europe "rigorously anti-socialist."[18] Debray and other traditional socialists, however, do not appreciate the extent to which technocracy is nothing but the state-capitalist flip side of socialist central planning and, consequently, doomed to a similar fate in the wake of the momentous changes presently under way. Within a less paranoid framework, which does not presuppose a capitalist conspiracy behind every new geopolitical development, a federal Europe unified by a strong constitution need not mean a regression from any of the historical achievements of the socialist movement. The egalitarian impulse need not necessarily translate into forced homogenization, but can also be redefined in terms of a micrological empowerment of citizens as consumers, whose freedom of choice indirectly determines the structure of a relatively autonomous production system. The Left must accept, once and for all, the fact that the traditional project of a rational socialism predicated on the central planning of production and an equitable distribution of the social product is doomed. It cannot avoid socialism's political translation into a dictatorship over needs (necessary to correlate production and consumption),[19] and into a new system of domination run by a New Class often legitimating itself with the help of the secret police.[20] The cybernation and rationalization of production, combined with shifting

18. *Ibid.*, p. 41. Unlike Panglossian American Left-liberal academics, who still insist on seeing the collapse of "really existing socialism" as a result of the efforts of mythical "masses of democratic movements" rather than as the unconditional failure of central planning, and thus dream of a chimerical "renewal of a democratic socialist alternative" (cf. Stanley Aronowitz, "A New Stage in History," in *New Politics*, Vol. II, No. 4 [Winter 1990], pp. 5-11), Debray has no illusions. Yet his refusal to move beyond the obsolete contraposition of capitalism and socialism plunges his analysis into an unwarranted pessimism. According to him, a unified Europe cannot retain its rich internal differences (p. 48); the transcendence of the state actually means the transcendence of the democratic framework (p. 40); and the whole unification effort risks becoming an excuse for a Japanese and American take-over (p. 45). The identification of unification with homogenization (p. 48) precludes the prefiguration of a thriving federal Europe. Thus his otherwise perceptive insight into the complementary ongoing processes of "globalization and balkanization" (p. 49) is translated into technocratic rationalizations and ethnic/religious particularisms — the "simultaneous triumph and death of the universal." That this may be part of the solution rather than the problem is ruled out by a lingering mythology of socialism as universalized bourgeois freedoms *cum* efficient central planning.

19. See Ferenc Feher, "The Dictatorship over Needs," in *Telos* 35 (Spring 1978), pp. 31-42.

20. Milovan Djilas, *The New Class: An Analysis of the Communist System* (New York Praeger Publ., 1957). See also Milovan Djilas, "A New Form of Dictatorship: An Interview with Milovan Djilas," in *Telos* 80 (Summer 1989), pp. 121-126.

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demographics, entail a redefinition and restratification of labor. In a unified Europe, transnational capital will dominate unchallenged. Unlike during the old *laissez-faire* or Keynesian phases, however, it need no longer necessarily head either towards self-destruction, collective emiseration, or cultural cretinization, because of the involution resulting from its alleged tendential stagnation. Capital's internalization of the same federal model being deployed at the *Grossraum* level entails the redeployment of that organic negativity able to guarantee growth and innovation without simultaneously re-creating the conditions for traditional labor conflicts.

The European federal system may be able to avoid the fate of its American counterpart, gradually subverted for over half a century by an increasingly massive state bureaucracy which has managed to penetrate almost every aspect of everyday life, undermine any lingering regional sovereignty, and destabilize local communities. The American conflation of *federal* with *state* functions inexorably enforces homogenization and conformity, even when it explicitly seeks to foster heterogeneity and diversity.[21] As a consequence, notwithstanding strong traditions of civil liberties and local autonomy, the post-Johnson US has also been besieged, on a considerably reduced scale, by most of the same problems that have precipitated Gorbachev's *perestroika*.[22] In fact, the failure of recent radical reforms in the US have already prefigured the fate of similar projects in Eastern Europe and the USSR. Before the term "*perestroika*" was even coined, Reagan's "revolution" against a similarly unwieldy and inefficient bureaucratic apparatus had already fallen victim to the same structural blockages that have managed to paralyze Gorbachev's program and accelerate the system's disintegration.[23] Reagan's program of radical decentralization and privatization was limited to ideological rhetoric. It lacked any concrete vision of the kind of constitutional reforms necessary to effectively reverse the statist involution precipitated by the New Deal and its aftermath. Thus it was readily stalled, and eventually checkmated, by a recalcitrant bureaucratic apparatus entrusted to the only people within Reagan's syncretic

21. This is the kernel of the "artificial negativity" version of Critical Theory and its main critique of post-modernism which, under the pretense of fostering particularity and otherness, ends up endorsing an even more pervasive conformism. See "Does Critical Theory have a Future? The Elizabethtown *Telos* Conference," in *Telos* 82 (Winter 1989-90), pp. 111-130.

22. See Tim Luke, "The Other 'Global Warming': The Impact of *Perestroika* on the US," in *Telos* 81 (Fall 1989), pp. 30-40.

23. Lucio Leante, "*Perestroika* at a Snail's Pace," in *Telos* 80 (Summer 1980), pp. 79-92.

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conservative coalition who could effectively manage it, the neo-conservatives, who made sure that no *fundamental* change occurred.[24]

This specter of an irreversible statist involution of the American federal model, and the consequent corporatist balkanization of its original project of constituting a new kind of nation out of a myriad of ethnic, religious and racial groups (the social stew in the mythical melting pot) may be eventually exorcised, not by hopelessly attempting to perpetuate the terminally subverted Reagan program, but by restructuring the American federal model on the basis of its counterpart presently being elaborated for 1992 and beyond in a unified Europe, i.e., a community of regional entities so culturally heterogeneous and fiercely autonomous as to render impossible any debilitating statist involution such as the one brought about by the New Deal. This *sine qua non conditio* of a vibrant federalism, however, necessitates an equally strong unifying center predicated on a jurisprudence able to regulate and adjudicate among its inevitably conflicting components. Such an essential unifying center can be grounded only within a *constitutional* framework even stronger than the American.

Ultimately crucial for European unification are not primarily economic and social considerations, although these are formidable, but constitutional and political questions concerning its federal structure and, last but certainly not least, the question of European identity itself, concerning which customs and traditions become decisive. Historically, the first definition of Europe in more than a geographical sense had a religious connotation (the *res publica Christiana*); while the second was legal in character (the *jus publicum Europæum*). The new European identity will have to retain both the noetic universality of the *res publica Christiana* as well as the pluralist jurisprudence of the *jus publicum Europæum* within an international context where the resulting federalism is likely to provide a guide for the constitution of other new geopolitical entities. Here Western metaphysics, which first prefigured free rational subjectivity as a cultural *telos*, and European jurisprudence, which was primarily a system of laws between sovereign states, not only retain their significance but acquire new relevance in generating the constitutional framework for a federated Europe.

All of these themes — from the restructuring of geopolitical relations

24. See Fred Siegel, "The Reagan 'Revolution': 1978-1981, R.I.P." in *Telos* 60 (Summer 1984), pp. 125-129; Paul Gottfried and Thomas Fleming, *The Conservative Movement* (Boston: Twayne Publishers, 1988); and Paul Piccone, "The Crisis of American Conservatism," in *Telos* 74 (Winter 1987-88), pp. 3-30.

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to the resulting constitutional problems and legal implications — were raised in a relatively unknown lecture by Schmitt on "The Plight of European Jurisprudence" which, almost half a century after it was first drafted in 1943, in the wake of the battle of Stalingrad (the beginning of the end of Nazi Germany), turns out to be exceptionally relevant.[25]

Contextualizing Schmitt

Long forgotten or deliberately ignored, Schmitt's remarkable text takes as its point of departure the tendential obsolescence of the state and, *ipso facto*, the nationalism it nurtured. He traces the trajectory of European consciousness from its religious roots in Judeo-Christian traditions, through its secularization in Roman law and European jurisprudence, to the disintegration of the *jus publicum Europæum*. At the

25. Carl Schmitt, *Die Lage der europäischen Rechtswissenschaft* (Tübingen: Internationaler Universitäts-Verlag, 1950). The first and last sections of this text were also published separately: "Die geschichtliche Tatsache einer europäischen Rechtswissenschaft," in *Universitas*, Vol. 5. No. 4 (1950), pp. 385-390; "Die Rechtswissenschaft als leztes Asyl des Rechtsbewußtseins," in *Universitas*, Vol. 5, No. 5 (1950), pp. 523-528. The full text is republished, along with further elaborations and appended comments on its history, in Carl Schmitt, *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954: Materialien zu einer Verfassungslehre*, second edition (Berlin: Duncker & Humblot, 1973), pp. 386-429. The core text of Schmitt's lecture was delivered February 16, 1943 in Bucharest (in German); November 11, 1943 in Budapest (in German); May 11, 1944 in Madrid (in Spanish); May 16, 1944 in Coimbra (in French); and December 1, 1944 in Leipzig (in German). Schmitt also delivered this same lecture in Spanish to the College of Lawyers (Colegio de los Abogados) in Barcelona on June 7,1944. There are two other extant shorter versions of the lecture Schmitt delivered in Leipzig. One, a rough Hungarian translation of the lecture he delivered in Budapest, which is obviously based on an early draft, and a French text of the lecture he delivered in Coimbra. See Carl Schmitt, "Az Európai Jogtudomàny mai Helyzete," *Gazdasági Jog*. Vol. V (1944), pp. 3-16; and the French text, simply titled "Carl Schmitt," in *Boletim da Faculdade de Direito*, University of Coimbra, Vol. XX (1944), pp. 603-621. In any case, Schmitt's Leipzig lecture is an expanded and refined draft of those lectures he delivered elsewhere in Europe. It is unlikely that, between the end of 1944 and its publication in 1950, he would have had the opportunity to alter the text, owing to the course of the war and his arrests in April and September 1945, which resulted in his internment until March 1947. During his interrogation, he reported that the text of his lecture was "still with the publisher." See "Interrogation of Carl Schmitt by Robert Kempner (II)," in *Telos* 72 (Spring 1987), p. 102. Bernd Rüthers finds ulterior meaning in the difference between the Hungarian version and the German text published in 1950, and suggests that Schmitt modified it for political reasons. See Bernd Rüthers, *Carl Schmitt im Dritten Reich: Wissenschaft als Zeitgeist-Verstärkung?* (Munich: C.H. Beck Verlag, 1989), pp. 87ff. Even if this were true, it would have more to do with Schmitt's political biography than with his general thesis, which is the same in all versions. It was not Schmitt's way to alter texts, as he did indeed do when he republished some of his Weimar works during the period of his collaboration with the Nazis between March 1933 and December 1936. His customary practice was merely to append comments to a given text, as he does in *Verfassungsrechtliche Aufsätze*.

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same time, this document is also a subtle apology for Schmitt's earlier political mistakes — a vindication cleverly articulated in terms of the reconstruction and evaluation of the life-work of some of his illustrious predecessors, and of the fate of European jurisprudence.[26] It is for this reason that, before the theoretical legacy and contemporary geopolitical implications of Schmitt's lecture can be fully appreciated, it is useful to locate it concretely within its proper biographical context. This is warranted not only by the character of the presentation, but also in order to dispel predominant liberal and neo-liberal biases meant to dismiss the importance of Schmitt's ideas by morally discrediting his *persona*.[27] Such crude *ad hominem* attacks are predicated on the tenuous assumption that the original sin of questionable ethical choices translates automatically into corresponding theoretical flaws. This increasingly popular *non sequitur* — an extension into political theory of the self-righteous mass-media sponsored practice of regarding the functional equivalent of sainthood a necessary precondition for holding political office — has hindered consideration of some of the most important contributions to 20th century political theory, such as Schmitt's critique of liberalism, while demagogically celebrating a global democratic order it otherwise contradicts,[28] and a mythical autonomous

26. Schmitt's identification of his own fate with that of Savigny a century earlier is all too obvious. He writes that no reexamination of Savigny can avoid his "well-known and often-mentioned misfortune of 1840," i.e., his failure after he actively entered public life — first to revise Prussian law and then as president of the Prussian State Council and Ministry. Schmitt characterizes it as "a real fall, when he [Savigny] left the firm ground on which he had become great and famous, and entered a world of apparently greater possibilities of influence." No better description could be found for Schmitt's own fall, after he joined the Nazi Party and learned the costs of collaboration. Schmitt emphasizes that Savigny's legislative activity coincided with the "ruthlessness of the new generation," which proceeded to savage his *System of the Modern Roman Law* in German periodicals. For Schmitt, Savigny's fall marked a moment in the collapse of the old order and the emergence of the new revolutionary forces leading to 1848. It did not have to do "with the fate of one man and his private contradictions but with a total historical and intellectual catastrophe." Schmitt, however, also points out that, after Savigny abandoned politics and dedicated himself once again to jurisprudence, notably with the publication of the eighth volume of his *System of the Modern Roman Law*, he "was again himself and had again found his place in European intellectual history." In 1944 Schmitt was also himself once again, but he has yet to find his place in European intellectual life. Today his "political misfortune" is still being used as "a refutation of his significance."

27. See, e.g., Stephen Holmes, "The Scourge of Liberalism," in *The New Republic*, (August 22, 1988), pp. 31-36. Holmes calls Schmitt "the intoxicated mythmaker," but the mythmaking here is all Holmes' own, and it is less intoxicating than insipid.

28. Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. by Ellen Kennedy (Cambridge: MIT Press, 1985). Although Schmitt may have made too strong a case for the

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"civil society" it deploys in a subtle apology for the *status quo*. This dogmatic exclusion of critical challenges prevents rethinking enthymematic premises — a process essential for the viability of science in general and political theory in particular. The price paid for this conformist dogmatism is a failure to understand rapidly unfolding political realities, which end up occluded by flat academic readings of modern history as an irresistible march of democracy — a Trojan horse concealing the descendants of the terminally discredited proletariat still waging the same old class struggle now repackaged as "democratization."[29] This ideological scenario effectively articulates well-entrenched New Class interests: the agenda of groups whose knowledge and expertise render them essential, and therefore highly privileged, in managing the often mediatized mandates of such an uncritically posited "democratic will."

There is little doubt that Schmitt, along with Heidegger, is one of the most conservative thinkers of the 20th century. But if Western thought is to be restricted solely to those able to pass the political litmus test of the dogmatic liberal Left, there would be no room in it for most of its best exponents from Plato to Hegel and Nietzsche. A political theory aspiring to be adequate to the new historical era needs to honestly acknowledge that, as Bobbio has indefatigably pointed out in his long debates with Italian communists,[30] most Marxists, neo-Marxists and liberals in this century have plodded along without a political theory *strictu sensu*. This state of affairs has not only contributed to underwriting some of the worst totalitarian barbarities of the century but, after the *economic* (rather than merely *moral* or *political*) collapse of "really existing socialism," has led to the embrace by repentant ex-Marxists of the most naive features of traditional liberalism. What is thereby perceived as the "poison" of Schmitt's thought may very well turn out to be the antidote required to reverse this stunning theoretical involution.

It was Schmitt himself who designated his lecture on "The Plight of European Jurisprudence" his "testament,"[31] at a time when his personal

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contradictory relation between liberalism and democracy, it remains the case that any constitutionally guaranteed rights can only limit democracy and popular sovereignty.

29. For an analysis of the hidden agenda of these fashionable versions of recycled liberalism and neo-liberalism, see Moishe Gonzales, "Exorcising *Perestroika*," in *Telos* 81 (Fall 1989), pp. 130-154.

30. See Norberto Bobbio, "Is There a Marxist Theory of the State?" and "Are there Alternatives to Representative Democracy?" both in *Telos* 35 (Spring 1978), pp. 5-30; "Why Democracy?" in *Telos* 36 (Summer 1978), pp. 43-54; "Marxism and Socialism," in *Telos* 39 (Spring 1979), pp. 191-200; and "Democracy — The Threatened Utopia: An Interview with Norberto Bobbio," in *Telos* 82 (Winter 1989-90), pp. 134-142.

31. On New Year's Day, 1945, in a letter to a former student, Schmitt wrote: "In

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fate was still very much in doubt. It was scheduled to appear in a *Festschrift* celebrating Johannes Popitz' 50th birthday on December 2, 1944.[32] The *Festschrift* was never published because Popitz, the Prussian Finance Minister and State Councillor under Hermann Goering, had been involved in the anti-Nazi resistance and was arrested as a major conspirator in the plot to kill Hitler on July 20, 1944. He was hanged in February 1945.[33] It had been Popitz who persuaded Schmitt to collaborate with the Nazi regime in March 1933, when they both hoped to exert a conservative influence in the new government. Their agenda was to use the German state to contain the Nazi movement. Because of their long-standing association, Schmitt feared reprisals after Popitz was arrested and had reason to believe this lecture could well be his last.

To properly contextualize Schmitt's lecture, it is necessary to go back to 1936, when he was accused by the SS of feigning to be a Nazi and withdrew from public life, i.e., when he entered the "inner immigration" and retreated into jurisprudence. His political failures, first in attempting to prevent the Nazis or the Communists from coming to power at the end of the Weimar Republic, and then in attempting to become the Third Reich's "Crown Jurist," had been major setbacks. After his "public defamation," he never *explicitly* criticized the Nazis.[34]

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the past year I have lectured outside Germany (in Bucharest, Budapest, Madrid, Barcelona and Coimbra) on 'The Contemporary Plight of European Jurisprudence' — a lecture I also wanted to deliver somewhere in Germany, and Leipzig appeared to be the appropriate place to depone a testament." This letter is in the hands of Schmitt's bibliographer, Piet Tommissen.

32. See "Interrogation of Carl Schmitt by Robert Kempner (II)," in Bendersky, "Carl Schmitt at Nuremberg," in *Telos* 72 (Summer 1987), p. 102. See also Lutz-Arwed Bentin, *Johannes Popitz und Carl Schmitt: Zur wissenschaftlichen Theorie des totalen Staates in Deutschland* (Munich: Beck Verlag, 1972); and Hildemarie Dieckmann, *Johannes Popitz: Entwicklung und Wirksamkeit in der Zeit der Weimarer Republik* (Berlin-Dahlem: Colloquium Verlag, 1960).

33. A political conservative, Popitz had previously served as State Secretary in the Finance Ministry during the Weimar Republic. An admirer of Schmitt's writings, he had befriended Schmitt and the two had collaborated in supporting the Hindenburg government, particularly after Popitz was appointed by Franz von Papen as a Reich Commissar for Prussia and a cabinet minister in 1932. They shared similar ideas on the problem of Weimar pluralism and the necessity of a strong and orderly state. Not only did Popitz provide Schmitt with invaluable information on developments within the government, he even published a defense of Schmitt's concept of the president as the defender of the constitution. See Carl Schmitt, "Der Hüter der Verfassung," *Archiv des Öffentlichen Rechts*, Neue Folge, Vol. XVI (March 1929), pp. 161-237. Cf. Johannes Popitz, "Wer ist Hüter der Verfassung?" in *Germania*, Vol. 61, No. 176 (April 17, 1931).

34. Schmitt described the context of this lecture as follows: "After my public defamation in December 1936, I obtained the possibility of lecturing abroad again only in 1942, when Himmler and those around him began to feel unsure about foreign countries and thought it better not to simply ignore, as they had been doing, the pressing

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But he did so *implicitly* in several scholarly treatises.[35] When in 1939 he began to develop the concept of *Grossraum* to account for the new international situation, his initial lecture appeared so relevant that several German newspapers published long articles about it. Subsequently, two British newspapers falsely presented Schmitt as the theorist behind Hitler's expansionist policy, and this became one of the charges brought against him after the war.[36] By 1943, however, official Nazi theoreticians had already clarified the qualitative differences between Schmitt's *juridical* concept of *Grossraum* and the real Nazi *racial* doctrine of *Lebensraum*.[37]

Schmitt's differences with the Nazis go back much further. Already in 1932 he argued that it was unconstitutional to appoint either a Nazi or a Communist to be chancellor and thereby to hand over the political premiums accruing to the legal holding of state power,[38] which he called "political surplus value."[39] In his last published article, he specifically addressed the need of movements such as Nazism and Communism for "state legality," defining *legality* as "the functional mode of a modern industrial or state bureaucracy" and contraposing it to *legitimacy*, "the formula of moral, ideological or philosophical identity and self-image of a political system."[40] To these he added the concept of "*super-legality*," which describes what happened after WWI

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invitations from foreign jurists and law schools wanting me to lecture. All my lecture trips abroad had a scholarly character and were no different from those of other German scholars . . . . I received no specific instructions or assignments on these trips. In view of the strict and jealous control of the Gestapo, I was cautious as was no doubt every other colleague." Carl Schmitt, "Response to the Question . . ." *op. cit.*, p. 109.

35. The first of these was an article on Hobbes and Descartes, which Schmitt later expanded into a book. See Carl Schmitt, "Der Staat als Mechanismus bei Hobbes und Descartes," in *Archiv für Rechts- und Sozialphilosophie*, Vol. XXX, No. 4 (1937), pp. 158-168; and *Der Leviathan in der Staatslehre des Thomas Hobbes: Sinn und Fehlschlag eines politischen Symbols* (1938), second edition, with an Afterword by Günter Maschke (Cologne: "Hohenheim" Verlag, 1982). For an historical reconstruction of these events, see Joseph W. Bendersky, *Carl Schmitt: Theorist for the Reich* (Princeton: Princeton University Press, 1983), pp. 243ff.

36. See "Interrogation of Carl Schmitt by Robert Kempner (I)," in Bendersky, "Carl Schmitt at Nuremberg," *op. cit.*, p. 99 and Appendix I, "Response to the Question: 'To what Extent did you Provide the Theoretical Foundation for Hitler's *Grossraum* Policy?' " in *Telos* 72, *op. cit.*, pp. 107-116.

37. Schmitt stressed this distinction in one of his interrogations after the war, when he was asked about his lecture on "The Plight of European Jurisprudence." See *ibid.*, p. 102.

38. Carl Schmitt, *Legalität und Legitimität*, second edition (Berlin: Duncker & Humblot, 1968). See also the notes appended to a republication of this essay in *Verfassungsrechtliche Aufsätze*, *op. cit.*, pp. 345-350.

39. See the forthcoming book by G.L. Ulmen, *Politischer Mehrwert: Max Weber, Carl Schmitt und die Kritik der Politischen Ökonomie* (Weinheim: Acta Humaniora, 1991).

40. See Schmitt, "The Legal World Revolution," in *Telos* 72, *op. cit.*, p. 74.

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when the strengthened validity of legislative norms, established by a simple majority of over 50%, forced a modification or abolition of constitutional norms, which usually require not only much greater majorities but also extensive discussions and deliberations before they are finally adopted. In the case of Nazism and fascism, what further contributed to "super-legality" was the arbitrary fragmentation of official responsibility among various state authorities.[41]

Hitler's "legal" revolution provided the best example of this state of affairs because he succeeded in using the political premiums of the legal holding of state power to close the constitutional door to "legality" behind him and to make his political enemies "illegal." Thus the most important aspect of the Nazi seizure of power was neither nationalism nor racism but *legality*. The objective of "The Plight of European Jurisprudence" is precisely to reiterate the development of the conditions which led to this runaway legality that instrumentalizes the legal system as a means to redress social, economic, and political "injustices." In this context, law ceases to be the ground of an established order and becomes a social and political force. Here the logic of the welfare-warfare state is no different from Nazism or Stalinism. Thus Schmitt's essay indirectly addresses not only the dynamics which brought Nazism and Stalinism to power, but also the logic underlying the New Deal and other projects predicated on state interventionism. Juridically, the New Deal never succumbed to the fate of Nazism and Stalinism, not only because of the strong American tradition of civil liberties, but also because the US never experienced world war on its soil or confronted social crises approaching those of Germany and Russia. Consequently, there was never any real need to deploy "super-legality." In the one rare instance when it was ventured by Roosevelt — his ill-fated attempt to "pack" the Supreme Court in a futile effort to remove juridical blockages to his policies — he was easily defeated.

Jurisprudence as European Identity

Schmitt described himself as a *katechon*, i.e., as a *retarder* or *restrainer* of what he called the "total functionalization" of law understood as the

41. Schmitt's constitutional argument just prior to the Nazi electoral victory was: "that every constitution contains certain fundamental 'principles' that belong to the unalterable 'constitutional system' . . . and that the sense of the constitution with respect to revisions is not to allow a procedure to set aside the system of order established by the constitution. If a constitution foresees the possibility of constitutional revisions, it does not thereby inadvertently provide a legal means for the abolition of its own legality, still less the legitimate means for the destruction of its own legitimacy." Quoted in *ibid.*, p. 76.

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deployment of legality as a tool of social and economic policy. According to Schmitt, European jurisprudence — the common language of Roman law, and the customs and statutes established by European jurists over the centuries — is itself the *katechon*, and in a very real sense the protector of a European identity embodied not in a frozen tradition but in a cultural project that does not forget its origin.[42] Thus, while reconstructing the trajectory of international political relations in past millennia, he inquired into the source of international arrangements which were displacing the *jus publicum Europæum* and could prefigure a new European order. He was by no means neutral towards new developments, and attempted to point out the extent to which present arrangments had paid too high a price for their institutionalization. The new *nomos* would not result from "the unearthing of atemporal institutions,"[43] but should

42. See Carl Schmitt, *Ex Captivitate Salus: Erfahrungen der Zeit 1945/47* (Cologne: Greven Verlag, 1950), p. 75. Schmitt explains that *katechon* was the decisive historical concept establishing a continuity between the Christian Middle Ages and the Roman Empire. This continuity was maintained through Roman law. It meant that only the Roman Empire and its Christian successor could hold back the power of evil, the coming of the Antichrist. But since the end of the world was inevitable, the constituted order of the Christian Middle Ages could last only so long as the concept of *katechon* remained vital. See Schmitt, *Der Nomos der Erde*, *op. cit.*, p. 38. In contemporary terms, after the Christian philosophy of history was secularized in the belief in infinite progress, Schmitt understands *katechon* as a "bridge" between historical consciousness and eschatological belief, the latter being the premise of all progressive philosophies of history. The *katechon*, be it a concrete institution or person, helps overcome the "eschatological paralysis" that accompanies the awaiting of an ultimate end. Within a context where jurisprudence was being overwhelmed by a legal positivism seemingly headed for what Adorno called "the totally administered society," Schmitt deployed the *katechon* as a viable oppositional entity seeking to salvage a rapidly disintegrating legality. Unlike Adorno's "strategy of hibernation" which, to use Lukács' metaphor, amounted to the political equivalent of sipping cognac at the edge of the abyss, Schmitt's *katechon* (European jurisprudence) posed a rational alternative to the prevailing logic of the given, even if couched in the secularized terminology of a conservative eschatology. See Schmitt's review of Karl Löwith's *Meaning in History*, "Drei Stufen historischer Sinngebung," in *Universitas*, Vol. 5, No. 8 (1950), pp. 929-930. Of course, political commitment in the 1930s entailed the risk of sliding into the abyss, which is precisely what happened to almost all those who chose to remain politically active, from Lukács and Bloch to Schmitt and Heidegger. Much to their credit, and unlike Lukács and Heidegger, both Schmitt and Bloch managed to eventually crawl out.

43. Schmitt, *Der Nomos der Erde*, *op. cit.*, p. 39. Thus *nomos* must not be confused with mere law (*Gesetz*). *Nomos* for Schmitt signifies the form in which a political and social order becomes spatially visible. This is why he specifically opposes the functionalization of *nomos* into law, and the misuse of legality by the centralized *Gesetzesstaat*, i.e., a state where legality is the *modus operandi* of a state bureaucracy. Such a state must rely on the continuous enactment of regulations emanating from a central area of command. In such a state, every public or secret decree can be called "law" if it is issued by a state authority. Its chance of compelling obedience is sometimes even greater than the statutes of jurisprudence, which result from the most detailed public discussions.

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also not be confused with legal positivism — a system Schmitt saw as symptomatic of decline in an age that could no longer distinguish between basic "rights" embodied in a constitution or some other fundamental juridical order and the multitude of contingent regulations necessary to any commonwealth, i.e., the predicament of Weimar Germany. This is why Schmitt was much more favorably disposed to the American constitutional structure which, unlike the Weimar Constitution, sharply limits legislative options.

While the *res publica Christiana* had been a strictly European order, the *jus publicum Europæum* was the first global order, even if based on the European sovereign state. As this state put an end to religious civil wars, the deliberated statutes of jurists replaced the confessional disputes of theologians. Since the new order was one of international law, jurists assumed a pivotal position in the creation and maintenance of that order until the state began to decline with the French Revolution and its aftermath, i.e., when the state bureaucracy increasingly began to instrumentalize the legal establishment. Schmitt's redeployment of European jurisprudence is meant both to restrain the "total functionalization" of law (i.e., the dissolution of jurisprudence) and to reconstitute European identity in a new epoch. Along with "super-legality," an extreme instrumentalization of law threatened social identity by leaving it to the whims of the official legislators of any given time to modify established legal frameworks. This threatened to precipitate the predicament popularized after Schmitt's death as "the post-modern condition," where nihilistic delegitimation (deconstruction) of *all* conceptual and institutional structures democratizes all views, projects and institutions — imaginary, utterly impossible, as well as long-established ones — to the same level, thus paving the way, under exceptional circumstances, for legally launching (thanks to super-legality) catastrophic social experiments such as Stalinism and even racial ones such as Nazism. While the former is usually perceived as a peculiarly Russian (even "Asiatic") development, it had many less successful counterparts in the West, and the latter was not only a German but a European phenomenon.[44] Both provided different answers to the question concerning European identity and sought to redefine European consciousness.

The Crisis of European Consciousness

Similar to Husserl's retracing of the roots of a European science

44. This is one of the main themes of Zygmunt Bauman, *Modernity and the Holocaust* (Ithaca, NY: Cornell University Press, 1989).

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gone astray as a result of the naturalistic reification precipitated by the Enlightenment — in order to rediscover European consciousness as a "new sort of attitude . . . called philosophy" to structure life rationally[45] — Schmitt locates those same roots in jurisprudence. His testament, "The Plight of European Jurisprudence," parallels what can be regarded as Husserl's own testament, "Philosophy and the Crisis of European Humanity,"[46] not only in that it was similarly aimed primarily at a European audience confronted with Nazi Germany, but also in its desperate search for a specifically European identity as a means to combat the prevailing and spreading nihilism. Both Schmitt's European jurisprudence and Husserl's European science are different facets of the same epoch-making project, begun in Greece and subsequently codified with science and Roman law, to structure life rationally. Because of their different thematic concerns, Husserl's reconstruction leaps over two millennia, from Athenian Greece to Descartes, while Schmitt's goes from Roman law to Hobbes and Savigny. Yet both accounts focus on the roots of the project — understood not as an ethnic, racial or geographic construct, but as a cultural one which, to the extent that it aspires to universality, encompasses all of humanity.

Unlike Heidegger's call for a flight back to *Being* in order to locate an alternative to a European consciousness seen as terminally mired in technistic alienation avoidable only through a mythical return to pristine authenticity, Husserl and Schmitt consider the constitutive character of the project ultimately irreversible, to the point of seeing the very questioning as itself rooted in the tradition under attack. The crisis they both described was certainly reversible, even if Schmitt's *katechon* metaphor is ambiguous. Recent fashionable challenges of the whole Western project from the viewpoint of an advanced stage of development of that very same project are pre-subverted by this very fact, thus undermining the alleged radical character of the challenges and rendering them hopelessly parasitic. When transubstantiated into a post-modern vindication of the autonomy of different communities threatened by Western cultural imperialism, this philosophical ploy turns out to

45. Edmund Husserl, *The Crisis of European Sciences and Transcendental Phenomenology*, trans. by David Carr (Evanston, IL: Northwestern University Press, 1970), pp. 276 and 289ff.

46. This lecture is appended to *The Crisis of European Sciences*, *op. cit.*, pp. 269-299. It was delivered at the invitation of the Kulturbund in Vienna on May 7 and 10, 1935. Husserl's work on the *Crisis* began sometime in 1934 and continued until the summer of 1937, when he was stricken by a terminal illness to which he succumbed on April 27, 1938. In November 1935, he lectured in Prague on "The Crisis of European Sciences and Psychology," which, together with his Vienna lecture, served as the basis of the *Crisis*.

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be merely another subtle way of perpetuating that same cultural imperialism by other means. Either the alternative is conceptualized within the same universe of discourse, in which case its radical character is automatically disqualified, or it is not, in which case it is no longer possible even to ask the question without in some sense necessarily reducing that otherness to sameness in the very process of conceptually apprehending it. The only *real* alternative is a nihilism understood not in the postmodernists' Panglossian sense of a prolegomena to cultural renewal, but as an erasure of the very possibility of raising questions concerning pluralism and cultural autonomy. Thus the solution to the crisis of European science and jurisprudence can only be *internal* to the project, i.e., from the viewpoint of a universalizing consciousness gone astray to the point of forgetting its own identity.

Husserl's phenomenological reduction is meant to generate an awareness of the constitutive processes which go into producing the world as we, the subjects of European civilization — and today this includes everyone participating in this paradigmatically Western discussion — experience it, in order to reexamine its originally motivating teleology and to recognize the extent to which it has been corrupted; and Schmitt's insistence on the normative primacy of European jurisprudence is meant to reassert the long tradition sedimented in our very *Umwelt*, to prevent legal positivism from plunging law into chaos. The objective is *to go back to the roots* of Western culture in order to reground a project that has been derailed and threatens increasingly to self-destruct. This project was subverted by naturalism for Husserl, legal positivism for Schmitt, technology for Heidegger, and identity logic for Adorno — all complementary characterizations of the same phenomenon of reification, inextricably related to Enlightenment ideology, modernity, and today rooted in the very structure of capitalist society.[47] While for Husserl the occlusion of the *Lebenswelt* precipitates a naturalism in science which precludes any further qualitative elaboration by diverting attention away from constitutive human operations to frozen conceptual structures oblivious to the decisive teleological dimension (and thus susceptible to instrumentalization by *any* project whatsoever), for Schmitt the marginalization of jurisprudence via the collapse of legitimacy into legality and the corollary rise of legal positivism bore similar

47. For an elaboration of this thesis, at least to the extent that it relates to Husserlian phenomenology, Marxism and, to a lesser degree, Critical Theory, see Enzo Paci, *The Function of the Sciences and the Meaning of Man*, trans. by James Hansen and Paul Piccone (Evanston: Northwestern University Press, 1972).

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results. In both cases, the point is to vindicate that essential dimension which not only distinguishes European consciousness from all others but, because of its commitment to rationality and order as constitutive features of being, comes to include all possible cultures.

Heidegger's and Adorno's allegedly more radical critiques of Western metaphysics and of identity logic seek to overcome the crisis by erasing the entire project. In so doing, they both work themselves into the respective political and philosophical dead-ends of an indeterminate Being or a mystical mimesis with nature. The first ends up susceptible to *any* project, from humanism to Nazism or Stalinism, while the second helplessly deploys philosophy and art to snipe inconsequentially at a reality otherwise impervious to attacks. Given this predicament, Husserl may very well have been right when, towards the end of "Philosophy and the Crisis of European Humanity," he speculated that "I, the supposed reactionary, am far more radical and far more revolutionary than those who in their words proclaim themselves so radical today." This also applies to Schmitt, whose critique of legal positivism follows a logical trajectory similar to Husserl's critique of "misguided rationalism"[48] in going back to the roots to determine the nature of the crisis of European consciousness.

Husserl calls for periodic phenomenological reductions to the *Lebenswelt* in order to be aware of the teleological character of the process that originally created these conceptual structures (and, *ipso facto*, social, cultural and political ones as well). The objective is to salvage that creative moment presupposed by all science and culture, without which both deteriorate to mechanical processes subverting the very *telos* of the project of European civilization: the constitution of a community of free rational subjects. Schmitt's historicization of jurisprudence has a similar objective — a kind of Hegelian *Aufhebung* meant to guarantee the concreteness of legal concepts by recontextualizing and consequently redefining them. The point, however, is not just to capture the new, but to recapture the occluded spirit of the old, without which the new can no longer even be apprehended as the new and ends up lost in the chaos of legal positivism. The target of both Husserl and Schmitt is Enlightenment ideology which, as the worldview of the *passive* bourgeoisie (or tenured intellectuals), cannot understand *labor* or *praxis* and, consequently, cannot deal with constitution and creativity. This inability to grasp the new also translates into a failure to appreciate the old. The

48. Husserl, *The Crisis*, *op. cit.*, p. 290.

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result is a loss of roots as well as vision in a myriad of equally valid *Lebensformen* or genealogies justifying and/or deconstructing everything, while all along operating within an unacknowledged tradition and culture which makes it all possible. Thus the so-called modernism/post-modernism debate that has recently come to pit various versions of Enlightenment ideology (misguided rationalism) against their relativist opponents weary of modernist excesses is not a prolegomena to the resolution of the crisis, but only its latest expression. It is not surprising that the Frankfurt School's project disintegrated with Habermas' communication theory — a lame recycling of that same Enlightenment ideology the previous generation of Critical Theorists never tired of criticizing — and that Heidegger's successors wade into the relativism and nihilism of post-modernism and deconstruction, whose paralyzing critique of the given leaves everything exactly as it was. Husserl's and Schmitt's regrounding of European science and jurisprudence promises to redefine European identity beyond its Enlightenment pathologies and thereby to revitalize Western culture.

The Crisis of European Jurisprudence

Where Husserl located Descartes and Kant as the key figures in the crisis of European science, for his purposes Schmitt focused on Savigny — a figure still regarded today as the 19th century paradigm of conservatism in jurisprudence.[49] Instead of following most of his contemporaries, who treated Savigny as merely another museum figure, Schmitt saw his "extraordinary relevance" in that he had explicitly opposed the codification associated with the French Revolution and the rising bourgeoisie, and implicitly opposed large-scale legislation, which was paving the way for the instrumentalization of law that Schmitt saw as eventually resulting in the annihilation of European jurisprudence. Codification had ushered in the primacy of positive law based on a *Gesetzesstaat*, a legislative state whose jurists were no longer an autonomous estate within civil society but, rather, a state bureaucracy. Given the positivist reduction of law to state codification, the *source* of law was no longer the established traditions of jurists but the legislated enactments of bureaucratic mandarins. For this reason, France provided the best example of a purely formalist-functionalist legality opposed to historical legitimacy (the rule of the bourgeoisie as

49. Cf. the special issue of *The American Journal of Comparative Law* devoted to "Savigny in Modern Comparative Perspective," Vol. XXXVII (Winter 1989), No. 1.

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opposed to that of the aristocracy). For revolutionary "progress," legality was an expression of self-government and thus of rationality, i.e., a historically higher form of legitimacy. This rationality, however, had nothing to do with the Greek's *logos*, but with what Husserl called "lazy reason," what Horkheimer described as the arbitrariness and onesidedness of "subjective reason" (in *The Eclipse of Reason*), and what Schmitt attacked for its pseudo-universality. It was a mechanical *ratio* bound to the fleeting needs of the moment and the interplay of predominant power interests. According to Savigny, common law had for centuries left private transactions to self-regulation. Now legislation threatened to destroy the clear separation of the state's public affairs and society's private business by legislating on everything. Of course, Savigny's aversion to legislation was also a defense of political conservatism. In fact, he defended jurisprudence as the bearer of historical legitimacy, and thus as a justification for aristocratic privileges, at a time when most European jurists were still under the spell of the French civil code.

It was at that time that the traditional legitimacy of the old order came into conflict with the legality of the bourgeois Code Napoléon and resulted in the split between the two. Schmitt located this split in 1830 — the so-called half-way revolution — when liberalism and nationalism first took hold, and legality and legitimacy became antithetical. Under the pressures of an increasingly powerful bourgeoisie, the legal structure was divorced from a still traditionally-grounded legitimacy. Whereas Savigny contraposed jurisprudence to state legality,[50] Schmitt sought to reconstitute European jurisprudence by tracing its roots back to Roman law. Retracing Husserl's argument that no matter how hostile European nations may be toward one another, they nevertheless "have a particular inner kinship of spirit which runs through them all, transcending national differences,"[51] Schmitt argues that there is a European community predicated on a shared heritage of Roman law that provides a recognized model of juridical thinking and thereby a common European law. The task of a European jurisprudence is to recover this common law and contrapose it to bureaucrats and technocrats

50. The term *Rechtsstaat* "arose in Germany shortly before 1848, in the critical period in which a previously unproblematic law became split into legality and legitimacy, which today we can only understand as artificial." The centralized *Gesetzesstaat* not only gradually replaced the *Rechtsstaat* in Germany and elsewhere in Europe, but precluded the kind of legal estate that existed in England. Such could not exist in a *Gesetzesstaat* because the jurist is a state official applying state law, and is not only other than but opposed to a non-state "free" jurist rooted in civil society.

51. Husserl, *The Crisis*, *op. cit.*, p. 274.

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who reduce it to regulations and procedures. The juridical estate entrusted with safeguarding this jurisprudence does not dominate; it adjudicates. Along with Husserl's "true" philosophers, the members of this estate could also be considered the "functionaries of mankind," guarding against the dissolution of the project of European civilization but not necessarily turning into a priesthood or a New Class.

According to Schmitt, the closed "legality" of the parliamentary-legislative state had developed its own system of justification, which was now directed against the "legitimacy" not only of monarchs but of any higher authority. As the ideology of the rising bourgeoisie, Enlightenment rationalism had led to the dismissal — as irrational — of any traditional legitimacy not immediately reducible to norms that could be readily validated in the court of reason now identified with the polity. Thus the distinction became artificial, and "legal" came to mean something "purely formal."[52] Given the growing tendency to deploy superlegality, legitimacy was automatically bestowed on whatever political majority could gain power at any given time, no matter how irrational and destructive. This artificial legitimacy could readily eclipse what Husserl referred to as the "weary" European heritage.

The plight of European jurisprudence is specifically concerned with what Schmitt calls its "crisis," whose beginning he traces to 1848, when an outmoded "natural law" was replaced by legal positivism. Once law became a matter of majority rule in a divided legislative body, it became an impersonal and objective force, i.e., a norm embodying the objective reason of political unity. After 1914, the contribution of jurisprudence decreased almost proportionately to the speed of a form of legislation — motorized legislation — which increasingly transformed law into a means of planning and administration consistent with the growth of technology, market demands and state control of the economy. After 1918, when the legislative process was both simplified and accelerated, decrees and directives increasingly displaced properly debated and legally deployed laws. As decrees replaced normal laws, they became "the elastic form of legislation" — a motorized decree, which linked the politicization of the economy and the functionalization of law.[53] This

52. Schmitt, *Legalität und Legitimität*, *op.cit.*, p. 14. Cf. also Carl Schmitt, "Das Problem der Legalität" (1950), in Schmitt, *Verfassungsrechtliche Aufsätze*, *op. cit.*, pp. 440-451.

53. While analyses of the politicization of the economy today are not altogether news, it should be remembered that Schmitt was writing in 1943, at a time when Friedrick Pollock, Franz Neumann and others were still in the process of theorizing the impact of state capitalism and state intervention in the economy in the three major systems of Nazism, Stalinism and the New Deal. Similarly, at that time Adorno

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meant not only the end of any necessary connection between traditional European values embodied in a now obsolete jurisprudence and whatever institutional framework they had engendered, but also the final blow to any *Rechtsstaat* grounded in a strong constitutional framework.[54]

Even the American Constitution became subject to frequent periodic reinterpretations predicated on the recontextualization of "original intent" within new socio-historical conditions, with the disastrous result that it also tended to become instrumentalized by predominant political trends. This is the juridical counterpart of post-modernity, where normlessness and indeterminacy are redefined as freedom, growing social disintegration is normalized by bureaucratic manipulation, and historical consciousness becomes paralyzed into an unalterable present. Unlike the US, where the original federalism has been gradually eroded, beginning with the Progressive Era, subsequently with the New Deal, and ultimately with the Cold War as catalysts to ever greater centralization and a concomitant disempowering of local and regional autonomy, the particularity of European states is too deeply entrenched ever to undergo a roughly similar process in a federated Europe. Unification at the federal level entails the displacement from the state to the federation of a number of functions, thus resulting in a loosening of overbureaucratized administrative apparatuses presently overseeing an uneasy aggregation of various regional, ethnic, and often even religious and linguistically heterogeneous entities — the present predicament of *every* European state. It is thus an opportunity to reassert the particularity of various communities hitherto coercively homogenized into artificial "nations."

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and Horkheimer, in order to explain political passivity in relatively open Western societies, began to study the culture industry and the instrumentalization of culture to guarantee political hegemony. Schmitt, on the other hand, was concerned primarily with international relations and the debilitating impact of legal positivism.

54. Traditional Marxist misreadings — the hidden source of recent American neo-liberal dismissals of Schmitt — see him as legitimating this exceptional situation as the basis for the fascist and Nazi annihilation of the rule of law while, on the contrary, Schmitt not only attempted to overcome the exceptional situation in the Weimar Republic, which is the whole point of decisionism, but blamed the outcome on the same legal positivism that the Nazis so effectively employed to destroy the constitutional order. In a sense, Nazism represented the triumph of the logic of legal positivism. For a typical misreading of decisionism, see Ernst Bloch, *Natural Law and Human Dignity*, trans. by Dennis J. Schmidt (Cambridge: MIT Press, 1986), pp. 149-151. Bloch sees Schmitt's legal thought as an apology for monopoly capitalism. This, however, is actually an apology for Bloch's own belated trajectory to anti-Stalinism after the erection of the Berlin wall. Along with all Marxist-Leninists, he had adhered to Stalinism and neo-Stalinism as the only viable opposition to a universalized fascism. A typical neo-liberal misreading is Richard Wolin, "Carl Schmitt: L'existentialisme politique et l'état total," in *Les Temps Modernes*, Vol. 45, No. 523 (February 1990), p. 58.

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The Future of Europe and the New International Order

Required as a precondition for a lasting unification, European identity is not a matter of merely circumscribing a specific geographical area of expanded economic activity above and beyond the community of states of the old *jus publicum Europæum*, but involves the constitution of a new geopolitical order. Schmitt's proposal to recycle European jurisprudence and Husserl's call for a return to the *Lebenswelt* to rediscover the teleology which defines cultures and constitutes communities, thus providing a way to transcend the predominant self-destructive consumerist mundanity, are not just "desirable" ideals. They are meaningful answers to concrete problems concerning the political framework of the new system and the cultural reconstitution of its various parts. A viable federal system needs both a strong but self-limiting central government as well as smoothly functioning cultural entities.

Both Schmittian jurisprudence and Husserlian phenomenology begin with sedimented meanings and traditions — not in order to reestablish a presumably "better" *status quo ante*, but to transcend the impasse of the present crisis by reactivating that creative impulse which gave rise to European culture and remains its *principium differentiationis*. The crises precipitated by legal positivism and scientistic alienation are both expressions of the Enlightenment privileging of abstract concepts over the concrete living reality whence they arose and the subsequent redefinition of that reality solely in terms of those features of being that these concepts are able to apprehend.

When confronted with the task of correlating production and consumption, the increasingly bureaucratizing Enlightenment first attempts to homogenize all particularistic communities. After it realizes that such a project results in devastating rationality crises, it ascribes to the very communities it has already destroyed fixed identities it then sanctifies as unchangeable and thus to be preserved against all possible modifications and developments. So mediatized, living communities become museum artifacts carefully supervised by ethnic elites whose privileged status is predicated on precisely the eternalization of various ethnic particularities. As such, these particularistic communities become sources of strife with all other heterogeneous communities and, willy-nilly, the justification for a central administrative apparatus required to mediate between them. Husserlian phenomenology in general, and the phenomenological reduction in particular, are useful here in defrosting bureaucratically ascribed fixed identities into their originally constituting components and, in thus recapturing the creative constitutive moment,

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set the stage for the reconstitution of these same cultural identities in terms of new living conditions no longer irrevocably determined by the original constituting act.

Only living communities able to resist bureaucratic redefinition are susceptible to effective federalization. Unlike their counterpart in the US, where a strong central government marginalized the states and now directly mediatizes weak and disintegrated ethnic communities as corporatist entities artificially constituted as control mechanisms to provide the kind of regulatory negativity the system needs to retain a modicum of internal rationality, most European communities are too strong to passively submit to such a bureaucratic maneuver. As a result, they can become part of a strong federation which will not be able to overwhelm them either directly or through the particular states by means of cultural homogenization or mediatized mummification.

A more complex issue has to do with geopolitical structures. The concept of "Europe" has always been problematic.[55] Thus the Holy Alliance, the only unified European political system during the 19th century, immediately triggered a response from the US in 1823 with the proclamation of the Monroe Doctrine. What at that time was practically unimaginable, i.e., a real political unification of Europe, is today about to become a reality, which raises once again similar international problems. When a unified Europe is achieved, and if it will not be a mere powerless frill but a lasting unity able to act as such, it will constitute a major new world power whose very existence will necessitate appropriate geopolitical adjustments.

Schmitt was well aware of this, and his reflections on the future international order took as the starting-point the post-war bipolar division of the world into East and West, which he considered (at least geopolitically) "fluid and indeterminate." Their many fundamental differences to the contrary notwithstanding, the two super-powers were structurally isomorphic. Both claimed to represent humanity and democracy, and both shared the Enlightenment philosophy of history predicated on infinite progress.[56] This belief, a secularized version of

55. See Carl Schmitt, "Der Völkerbund und Europa" (1928), in Schmitt, *Positionen und Begriffe*, *op. cit.*, pp. 88-97.

56. Carl Schmitt, *La Unidad del Mundo* (Madrid: Ateneo, 1951); "Die Einheit der Welt," in *Merkur*, Vol. VI, No. 1 (1952), pp. 1-11; "Der neue Nomos der Erde," in *Gemeinschaft und Politik*, Vol. 3, No. 1 (1955), pp. 7-10. "Die geschichtliche Struktur des heutigen Welt-Gegensatzes von Ost und West," in *Freundschaftliche Begegnungen: Festschrift für Ernst Jünger zum 60. Geburtstag*, Edited by Armin Mohler (Frankfurt a/M: Vittorio Klosterman, 1955), pp. 135-167; and "Gespräch über den neuen Raum," *op. cit.*

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Christian eschatology, generated a correspondingly secularized version of the Church: a planning bureacracy entrusted to run the totally administered society. In the same way that the Church came about as an institution to mediate the incommensurability of an infinite divinity and the unhappy consciousness of a finite humanity,[57] a New Class of bureaucrats and technocrats is deployed in technical-industrial society to mediate the incommensurability of macroeconomic processes and the microeconomic realities of the masses. While the Church gradually corrupted the essence of Christianity in the mundanity of scholasticism, thus eventually triggering a Reformation, the New Class gradually dissipated the heritage of European jurisprudence through legal positivism and motorized legislation, necessitating a corresponding reaction in the East with the disintegration of "really existing socialism" and in the West with the much slower demise of the welfare state. The rise of the modern state and the *jus publicum Europæum* at the end of the 16th century find their counterpart in the rise of a federated Europe and of a new international order of *Grossräume* at the end of the 20th century.

Writing in the immediate post-war period, Schmitt could not possibly have foreseen the recent turn of events. Yet he was able to outline possible geopolitical developments. Rejecting the standard alternative of either the existing international dualism or the pseudo-universalism resulting from one system eventually overwhelming the other, he prefigured a third possibility, i.e., "a true pluralism,"[58] understood as a balance of several equally powerful *Grossräume*. Such a new global order will resemble the old *jus publicum Europæum*, which was also pluralistic, but will not be Eurocentric: it will be truly global. Since unity requires otherness for its very cohesion, a new international order will also have to be defined by a totalizing other. Thus Schmitt focused on the new division of the world into industrially developed and underdeveloped regions struggling over the distribution of the world product. The key question for a European *Grossraum* will be not only the distinction between its internal composition and its external relation to other *Grossräume*, but more importantly, the relation of the new system to the rest of the world unable or unwilling to join the new international comity of *Grossräume*.

Schmitt thought that a balance of several independent *Grossräume* could work only if they were self-limiting and structurally homogeneous. His ideal model for all possible *Grossräume* was none other than the

57. G. W. F. Hegel, *The Phenomenology of Mind*, trans. J. B. Baillie (New York: MacMillan, 1961), pp. 241-267.

58. Schmitt, "Die Einheit der Welt," in *Merkur*, *op. cit.*, p. 5.

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US.[59] In contrast to the post-Wilsonian US policy of bringing about the political (democratic) unity of the world, Schmitt considered the original world-view of North America to be pluralistic, as typified by William James, whose philosophy he labelled "consciously pluralist."[60] Compared to the American "magnetic fields of human energy," the old European state's territory, the Western hemisphere, NATO, and the UN were all merely "superficial" aggregations.[61] Since the Monroe Doctrine provided the original model of a *Grossraum*, and since the current drive for European unity is, as Agnelli put it, "the child of the Marshall Plan,"[62] the most likely paradigm for a unified Europe will be a federal structure similar to the one provided by the American Constitution, which has Romanist origins and, as such, already embodies the spirit of European jurisprudence.[63]

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59. Carl Schmitt, "El Orden del Mundo después la segunda Guerra Mundial," in *Revista de Estudios Politicos*, No. 122 (March-April, 1962), p. 32. See the German translation by Günter Maschke: "Die Ordnung der Welt nach dem zweiten Weltkrieg: Vortrag von 1962," in *Schmittiana-II*, Edited by Piet Tommissen, "Eclectica," Vol. 19, No. 79-80 (1990), p. 24.

60. According to Schmitt, "He [James] rejected the notion of a unity of the world as un-modern and saw in the multiplicity of possible world-views, even in the multiplicy of truths and loyalties, the true modern philosophy." See Schmitt, *La Unidad del Mundo*, *op. cit.*, p. 20; and "Die Einheit der Welt," in *Merkur*, *op. cit.*, p. 3.

61. These "magnetic fields" include North American internal and external markets, the American dollar, American culture, its language and its moral prestige. See Schmitt, "Die Ordnung der Welt nach dem zweiten Weltkrieg: Vortrag von 1962," in *Schmittiana-II*, *op. cit.*, p. 25.

62. Agnelli, "The Europe of 1992," *op. cit.*, p. 68.

63. Like England, the US did not experience a very broad reception of Roman law. Nevertheless, as Schmitt argues in his "testament," not only are there many examples in English history attesting to the common influence of Roman law, but "the reception of Roman law" evident in every cultural sphere justifies speaking of Roman law as the foundation of the European spirit, and particularly in international law. Thus, even though the Monroe Doctrine was formulated against European intervention, the US held to the principles and statutes of Eurocentric international law. The American *Grossraum* was a new paradigm in the European mold. As Husserl put it, "in the spiritual sense" Europe includes "the English Dominions" and the US (*The Crisis*, *op. cit.*, p. 273). More specifically, according to Schmitt, even the all-important "due process" of American courts "exemplifies the European origin of constitutional thinking and governmental forms in the US. It is an *institutional guarantee*, which is no guarantee of the *status quo*." In particular, unlike common law but in line with Roman law, "due process" means "a minimum of form and procedure." As Mitchell Franklin argues, however, there is also a sense in which one can speak of the influence of Roman law on the American Constitution. Unfortunately, Franklin formulates his argument in terms of a class analysis that tends to deflect attention from his most important claims, i.e., that Roman law influenced the first (1787) and the second (1789) US constitutions, the latter embodying the Bill of Rights in the first 10 amendments, primarily through the power of the French Enlightenment, whose juridical thinking embodied a secularized version of natural law derived

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Far from the original model, the US "federal" government has now taken over practically all administrative functions, making all regional governments — state, county and city — merely ancillary. It has evolved into a massive interventionist state which remains "federal" only in name. Clearly this is not the kind of federalism that already over-bureaucratized European states need, nor one they are likely to accept. It would entail a loss of national and regional autonomy none would be willing to forfeit, no matter what real or imagined economic advantages may accrue. Much more useful here is the *original* US model, before it became corrupted by legal positivism and statism. This federalism translates into a new supra-national order not likely to be bogged down in the traditional conundrums of American national politics, while its constituent parts benefit from all the advantages of a common market, unprecedented economic rationalization, and decentralized management. It may itself provide a model of political organization not only for the rest of the world, but for a weary US that has long forgotten its true political heritage.

In terms of international law, the launching of the European federation and the collapse of "really existing socialism" can be seen as two sides of the same coin: the exhaustion of bipolarity and pseudo-universalism, and the birth of a truly pluralist geopolitical alternative. Such an alternative may also avoid the pitfalls that have resulted in the gradual decline of the United Nations to its present predicament, where it powerlessly oversees the unfolding of the same old *Realpolitik* predicated on the increasingly obsolete sovereign state, while opportunistically deploying the universalist rhetoric of human rights if and when it corresponds to independently grounded power politics. This is a result of the original mistake of attempting to construct an international

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from Roman law well before it degenerated into legal positivism a century later. The idea of an American Enlightenment is hotly debated, but it remains a fact that the Bill of Rights in particular presupposes a secularized "natural law," and that the codification of the "rights" — not to be confused with the later Napoleonic codification of law and the involution of the Enlightenment project — is consistent with both the fact and the spirit of "the common European edifice" of Roman law. See Mitchell Franklin, "Concerning the Influence of Roman Law on the Formulation of the Constitution of the United States," in *Tulane Law Review*, Vol. XXXVIII, No. 4 (June 1964), pp. 621-648; and "Some Considerations on the Existential Force of Roman Law in the Early History of the United States," in *Buffalo Law Review*, Vol. XXII (1972), pp. 62-105. Franklin first became acquainted with Schmitt's work when working as a member of the American legal team at the Nuremberg trials. For a discussion of the impact of Mitchel Franklin, see "Special Section on Mitchell Franklin," with articles by Robert D'Amico, Terry Di Filippo, Philip Moran, David Fraser, Alex Delfini and Paul Piccone in *Telos* 70 (Winter 1986-1987), pp. 6-57.

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organization mirroring, as did the League of Nations earlier, predominant power relations. With the burgeoning of new states in the Third World, the focus of the organization has shifted from the Security Council to the General Assembly, which has become an international debating society. But the old structure still assigns decisive power to the Security Council. With the decline of the USSR and the involution of China, the rise of Europe and Japan, and with Third World countries increasingly resenting their deteriorating marginal status, this structure is becoming increasingly obsolete. The result is the gradual decline of the organization into an ineffectual international aggregation of individual states mired in pseudo-universalist rhetoric while in fact following the particularistic logic of predominant power blocs.

Already prefigured with the launching of the Trilateral Commission, a new United Nations may very well embody the spirit of European jurisprudence in constituting a truly pluralist order. In this project, the essence of European jurisprudence — Roman law as the ground of unity for the new pluralism, and natural law[64] secularized into human rights — may provide essential guidelines. With the fading of the Cold War, it will easily prove more effective than the present international disorder and the current instrumentalized articulation of human rights ideology. No longer able to parasitically rely on a geopolitical *Realpolitik* rendered obsolete by the collapse of the bipolar division of the world, human rights, as well as other equally crucial issues such as ecological responsibility, respect for cultural differences, and the like, need to be based on new and more solid foundations. In redeploying the truly universalist project embodied in European science and jurisprudence, it will not be a matter of backing into the future, as with most such efforts in the 20th century, but of shaping it according to the only proven project that, notwithstanding its innumerable crises and periodic reformulations, remains fundamentally valid.

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64. Breuer quotes Niklas Luhmann to the effect that "there can be no natural law, and thus no standard which could help formulate a global alternative to pure social structure." He himself observes that "the departure from natural law, already announced in legal positivism at the turn of the century and finding its completion in modern functionalism, is therefore logical and irrevocable." See Stefan Breuer, "The Metamorphoses of Natural Law: On the Social Function of the Pre-Bourgeois Foundations of Law," in *Telos* 70 (Winter 1986-87), p 114. But this ahistorical capitulation to the logic of immediacy contradicts its implicit voluntarism in assuming the "irrevocable" obsolescence of the Western project. No conformist functionalism, i.e., the ideology of the totally administered society, can *a priori* rule out this possibility.

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*The Plight of European Jurisprudence**

Carl Schmitt

European Jurisprudence as Historical Fact

It might seem inappropriate and unscientific for a jurist to speak of European jurisprudence, not only because Europe has torn itself apart in two world wars but also for a formal and apparently even specifically juridical reason, namely the positivism that has dominated our legal life for the past century. Positivistic jurisprudence values only positive norms, understood as existing state law or norms imposed by a superior will. The formal basis of positive law is always only established norms enforced by the state. Given the orientation of this legal positivism to state law, there can be only German, French, Spanish, Swiss and other such law, but no European law and no European jurisprudence. Since there is no European state and no European legislature, at best there can be historical and comparative juridical studies without any positive significance. In a formal sense then, the matter is already closed.

According to contemporary legal positivism, state law has become the only possible grounding even in so-called international private law, which for Savigny (1849) was still based on a European jurisprudence — on the "recognized community of different nations." When a judge of a particular country draws upon foreign law to decide a particular case in international law, "even though its subject is international, the

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* Translated by G.L. Ulmen from: "Die Lage der europäischen Rechtswissenschaft (1943/44)," in Carl Schmitt, *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954: Materialien zu einer Verfassungslehre*, second edition (Berlin: Duncker & Humblot, 1973), pp. 386-426. Although Schmitt distinguishes between *Recht* (right) and *Gesetz* (law) to demonstrate the transition from historical legitimacy to positive legality, in line with American usage both are translated as "law" because the distinction is contextually clear. Schmitt's notes have been completed and/or corrected.

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grounding remains purely state law."[1] Consequently, in the latter half of the 19th century new problems arose in international private law, particularly and increasingly in relation to the state's interest in "public order." The very existence of a European juridical community in international private law was put in question and, owing to conflicts between state norms, was transformed into a collection of precarious agreements.[2]

From the viewpoint of formal validity, for legal positivism there is no longer a European international law. Until the end of the 19th century, what one called "international law" was synonymous with European international law and even a *jus publicum Europæum*. But from a positivist standpoint, international law and state law had been divided into two absolutely distinct and isolated spheres: state legislation, on the one side; international accord, on the other. The positivism of domestic law is consistent with the positivism of international treaties. The separation of internal and external, of domestic law and international law, is so absolute that formally there can be no conflict between them. It is true that one speaks of international obligations being "transformed" into domestic law. All such transformations, incorporations, extensions, etc., are, however, only sham bridges over the gulf that divides inner and outer.

The dualistic theory of the lack of relation between inner and outer developed by Triepel in his 1899 book on international and domestic law is now generally accepted.[3] This means an outright denial of a European

1. Concerning this formulation of the question posed by the Greek jurist, Fragistas, see my article, "Über die zwei grossen 'Dualismen' des heutigen Rechtssystems (1939): Wie verhält sich die Unterscheidung von Völkerrecht und staatlichem Recht zu der innerstaatlichen Unterscheidung von öffentlichem und privatem Recht?" in the *Festschrift* for Georgios Streit: *Melanges Streit*, edited by Stylianos Prodromou Sepheriades, et al. (Athens: Imprimerie Pyrsos, 1940). [Now reprinted in Carl Schmitt, *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles 1923-1939* (1940), second edition (Berlin: Duncker & Humblot, 1988), pp. 261-71.]

2. The best historical overview of the characteristic features of the development of international private law in the 19th century can be found in the works of Henri Donnedieu de Vabres: 1804-1840, a tendency to apply one's own [state] law; 1840-1874, a tendency to apply personal statutes and the increased consideration of the will of the parties; 1874-1904, further extension of personal statutes (no longer tied to domicile but to citizenship), together with growing significance of the proviso of *ordre public*. Such an authority as John Westlake has even claimed that one of the greatest changes since the 12th century is the transition from domicile to "political nationality." [John Westlake (1828-1913), a leading student of international law, was one of the founders and editors of the *Revue de Droit International et de Législation Comparée*. His early efforts were devoted to private international law.] Along with the extension of the proviso of *ordre public*, the 20th century has especially seen the "logical reflections of a hall of mirrors" and the "blind alley of qualification theory."

3. Heinrich Triepel, *Völkerrecht und Landesrecht* (Leipzig: C.L. Hirschfeld Verlag, 1899).

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jurisprudence even on the level of the law of nations: either the jurist works within the legal framework of a particular country, where his particularistic view rules out any bridges over the gulf between inner and outer, or he works with international law, i.e., with norms regulating relations between states. But even then he deals only with the norms of positive law established by individual states through mutual treaties, agreements or customs, and these never constitute a concrete order. From a positivist perspective, it is mere coincidence that there happen to be European states joined by legal relations such as treaties and agreements. In this formal sense, there is nothing juridically specific about the treaties and agreements of one European state with other European states any more than those with non-European states. The European spirit developed a specifically European international law from the 17th to the 19th century. At the turn of the 19th to the 20th century, however, this international law dissolved into innumerable and indistinguishable relations between fifty to sixty states all over the world, i.e., into a general arrangement lacking any spatial concreteness.

Of course, such a positivism of treaties and laws is only as valuable as those treaties between states and the internal laws on which it rests. From the standpoint of jurisprudence, it is nothing more than a normative fiction whose value is relative and temporal, as in the case of the whole *Weltanschauung* of 19th century positivism. It intentionally ignores the material [as opposed to the formal] significance of law, i.e., the political, social and economic meaning of concrete orders and institutions. For this reason, it cannot claim a monopoly of juridical thinking and thus cannot have the last word on the matter at hand. A jurisprudential interpretation and systematization must by definition consider the material content of norms and the specific meaning of institutions. This substantive standpoint, however, yields a picture completely different from the formal-positivist rupture of inner and outer. The meaning and content of essential concepts and institutions of the European peoples are surprisingly similar. In this regard, there is a very strong European legal community which, until recently, also had immediate political significance.

In the comity of nations, in the practical international law of the whole last century, membership in the community of international law was predicated on a specific and typically European juridical standard in codification, legislation and justice. A state was considered "civilized" only if it subscribed to this common European standard. In the 19th century, non-European states were recognized as members of the community of international law only if they subscribed to this standard. Thus the theory

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of recognition in international law had a concrete meaning, which in 1884 Lorimer could justifiably consider the foundation of international law.[4] Bismarck was the "last statesman of European international law."[5] Since then, recognition in international law has dissolved into a nihilistic opportunism — into an arbitrary, purely factual and tactical procedure.[6] As late as the 1922/23 Lausanne Conference (with respect to Turkey and the question of the abolition of so-called capitulations), the European powers held that, at least in principle, a state must conform to the European standard of right and justice in order to be recognized as completely sovereign.[7] On January 12, 1926, a commission convened in Peking to investigate extraterritoriality in China claimed that in principle the complete Europeanization of Chinese legislation and justice would suffice to insure the integrity of law in China.[8] The criteria establishing what actually constituted a "state" or whether a political entity was "ready for statehood" were derived from the normal concept of a European state.[9] What from a positivist perspective of "formal legitimacy" appears as a juridically uninteresting and coincidental aggregation of legal arrangements

4. [Tr.] James Lorimer (1818-1890) was professor of public law at the University of Edinburgh. One of the original members of the Institute of International Law, he was the only British jurist who spoke the continental language of natural law, which made him Britain's spokesman in relation to warring foreign states.

5. This characterization is found in Julius Goebel, *The Struggle for the Falkland Islands* (New Haven: Yale University Press, 1927), p. 192. This book goes far beyond the theme of its title and is important for the history of European international law.

6. See the conclusion of Peter Stierlin's "Die Rechtsstellung der nicht anerkannten Regierung im Völkerrecht," *Zürcher Studien zum Internationalen Recht*, No. 3 (1940); on the significance of the Mexican Estrada Doctrine, p. 200; Lorimer's formulation, "la doctrine de reconnaissance fondement de droit international," is found in *Revue de Droit International et de Législation Comparée*, Vol. XVI (1884), pp. 333f.

7. Together with the end of "capitulations" [any of various agreements or conventions made originally by the Greek emperors at Constantinople and afterwards by the Porte granting special privileges and rights of extraterritoriality to foreign governments; hence any such treaty or convention], in Art. 28 of the Lausanne Treaty of July 24, 1923 there was a "Declaration on the Administration of Justice" put forward by the Turkish delegation. This was not ratified by the National Assembly in Ankara. Nevertheless, it led Turkey to adopt a codification of civil law that followed the prototype of the Swiss Civil Code of December 10, 1907. Further legislative reforms of civil law also followed the Swiss prototype, while the codification of criminal law in 1926 was almost word for word that of the Italian criminal code. The Turkish codification of criminal trial law held to German and Italian principles, whereas the codification of civil trial procedure followed the example of the Swiss canton of Neuchatel.

8. Roy Hidemichi Akagi, *Japan's Foreign Relations, 1542-1936: A Short History* (Tokyo: The Hokuseido Press, 1936).

9. This can still be seen in the requirements for "statehood" as formulated by the Iraqi mission to the League of Nations. Cf. Alfred von Verdross, *Völkerrecht* (Berlin: Julius Springer Verlag, 1937), pp. 65n.

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becomes from a substantively jurisprudential perspective a genuine European community characterized by a true common law, despite major differences between German, Anglo-Saxon, Latin and various other legal realms.

In every legal discipline — civil law, trade law, criminal and trial law, tax law and economic law — there are numerous examples known to every expert in the field. The correspondence and interaction have an effect on vital individual norms and legal institutions as well as on the systematic structure of the whole. The present law of individual European states was developed in such an ongoing, internal European process of such inclusions and interactions. At the risk of exaggerating, it can be said that for a millennium the whole legal history of the European peoples has been one of reciprocal receptions (here "reception" does not mean mere adaptation but rather an alternating and often strongly resisted process of incorporation and refinement able to evaluate and utilize received law). This kind of reception is both natural and organic. It resembles the borrowing of forms and motifs in art, music and painting. Here the words of a great 17th century master of German music are appropriate: "Borrowing is allowed, as long as one gives something in return." All European nations have done so in their own way.

Roman Law as the Agency of European Jurisprudence

The "reception of Roman law" is the great recurring event in the history of jurisprudence. It has determined the juridical development of all European peoples — not only those which have accepted it, but also those which have successfully resisted it, like England and the Scandinavian countries, whose common law has remained untouched by it. The European significance of the rebirth of Roman law in the Middle Ages and its influence in various countries and epochs are not the same as the "positive validity" of precepts and concepts found in the *Corpus Juris Justiniani*. The problem of the political or social utilization of these precepts and concepts by political rulers or social classes raises questions beyond the scope of our concerns here. But a few remarks on the European significance of Roman law are in order, because fortunately we need no longer concern ourselves with the practical and positive validity of pandect law or the perplexing question of the so-called subterranean transmission of Roman law in 19th century codifications.

For five centuries the history of European jurisprudence has been a history of the science of Roman law. That is the astounding fact! What has been considered "law" in law schools, universities and juridical faculties since their founding in the 12th, 13th and 14th centuries has

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been, along with canon law, above all Roman law. And it was taught in Latin, the language of Roman law, which for more than half a millennium has influenced and stamped the legal concepts in all European languages. In its various historical forms — of annotators, commentators, Romanists and Pandectists — Roman law has been recognized as the essential, if not the only form of jurisprudence. As Sohm[10] has observed, the reception of Roman law in Germany was not the reception of a law but only of a jurisprudence. Here I cannot enumerate the many historical questions the reception of Roman law and jurisprudence have raised for each of the European peoples throughout many epochs. The impact of the science of Roman law was overwhelming, not only on the history of European jurisprudence but on the history of European science and the European spirit as a whole.

The struggle for and against Roman law is as old as its history — a struggle concerning its evaluation, its advantage or disadvantage to indigenous regional or national legal development. In all countries this struggle has had its own particular history and its often unexpected fronts.[11] It raged in Germany especially after 1933, and here too it engendered new perceptions and insights.[12] Given such a tremendously rich and varied legal history spanning three centuries, it is crucial to be specific when one discusses "the" Roman law.

For example, it has generally been recognized that the old Roman law

10. [Tr.] Rudolf Sohm (1841-1917) was probably the most brilliant dogmatic jurist of his time. Working in a period in which the conflict between Romanists and Germanists was not as sharp as it had been, he was attracted to both Roman and Germanic law and, later in life, also to canon law, and achieved almost equal fame in all three.

11. The book by the Roman law expert at the University of Madrid, Ursicino Alvarez Suarez, *Horizonte actual del Derecho Romano* (Madrid: Consejo Superior de Investigaciones Cientificas, Instituto Francisco de Vitoria, 1944), is an encyclopedia of Romanism containing a wealth of historical material on the subject. This work is also important with respect to the voluminous literature on the "crisis of Roman law." In addition to publications cited below, the writings of two young Romanists are important in this context. See Valentin-Al. Georgescu, "Remarques sur la crise des études du Droit Romain," published in the collection of his juridical-philological writings, *Études de Philologie juridique et de Droit Romain* (Bucharest-Paris: Imprimerie nationale, 1940), p. 403; and Alvaro d'Ors Pérez-Peix, "Presupuestos criticos para el estudio del Derecho Romano," in Ors Pérez-Peix, *Theses et Studia Philologia Salamanticensia* (Salamanca: Colegio Trilingue de la Universidad, Consejo Superior de Investigaciones Cientificas, 1943).

12. In this respect, Paul Koschaker's 1937 lecture: *Die Krise des römischen Rechts und die romanistische Rechtswissenschaft* (Munich and Berlin: Beck Verlag, 1938) is a document of great historical significance. The meaning of Koschaker's lecture is emphasized in a review by an authority on German legal history, Freiherr Claudius von Schwerin in *Deutsche Rechtswissenschaft*, Vol. 4 (1939), pp. 182f. My view of Franz Beyerle's critical commentary — "Schuldenken und Gesetzeskunst," in *Zeitschrift für die gesamte Staatswissenschaft*, Vol. 102 (1942), p. 210n — is implicit in my remarks.

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is a magnificent monument of a very old and sound peasantry. Bonfante, Siber, Wlassak, Westrup[13] and Wieacker[14] have shed new light on many of its components, particularly family and inheritance law. Every new European intellectual current has revealed new and unexpected aspects of Roman law. From the Middle Ages and the Renaissance to the present, every new epoch has found an inexhaustible wealth of new applications. Just as 18th and 19th century German pandect jurists created an elaborate system based on subjective right, so today one can praise classical Roman law for its flexibility and practicality (vouchsafed by the Praetor), and thus for its ability to provide a viable paradigm for modern labor law and commercial law.[15] As late as 1939, Koschaker[16] located the reason for the crisis of Roman jurisprudence in the fact that pandect law lost its relevance after 1900, when the German Civil Code became law.[17] Such an account, however, was too closely bound with a late 19th century academic jurisprudence struggling against legal positivism. By comparison, the 1811 Austrian Civil Code triggered no such crisis.[18] The

13. [Tr.] Pietro Bonfante (1864-1932) wrote on the Code of Hammurabi, but especially on Roman law. Heinrich Siber (1870-1951) was a specialist on Roman constitutional law and German civil law. Moritz Wlassak (1854-1939) wrote prolifically on Roman and classical law. Carl Wium Westrup (1874-1958) was a specialist on Roman law.

14. Cf. the reference of Franz Wieacker [1908-] in "Entwicklungsstufen des römischen Eigentums" in *Das Neue Bild der Antike* (Leipzig: Koehler & Amelang, 1942), Vol. II, p. 178; see also Franz Wieacker, *Hausgemeinschaft und Erbeinsetzung: Über die Anfänge des römischen Testaments* (Leipzig: T. Weicher Verlag, 1940); and Max Kaser, *Römisches Recht als Gemeinschaftsordnung* (Tübingen: J.C.B. Mohr [Paul Siebeck], 1939).

15. Ors Pérez-Peix, "Presupuestos criticos para el estudio del Derecho Romano," *Theses et Studia Philologia Salamanticensis*, *op. cit.*, pp. 21f.

16. [Tr.] Paul Koschaker (1879-1951) was a specialist on Babylonian and Assyrian as well as Roman law. See his *Europa and das römische Recht*, second enlarged edition (Munich: Beck Verlag, 1953).

17. [Tr.] Cf. *The Civil Code of the German Empire: As Enacted on August 18, 1896, With the Introductory Statute Enacted on the Same Date (In Effect January 1, 1900)*, trans. by Walter Loewy (Boston: The Boston Book Co., 1909).

18. See Ernst Schönbauer, "Krise des römischen Rechts," in *Festschrift für Paul Koschaker, mit Unterstützung der Rechts- und Staatswissenschaftlichen Fakultät der Friedrich-Wilhelms-Universität Berlin und der Leipziger Juristenfakultät: Zum sechzigsten Geburtstag überreicht von seinen Fachgenossen* (Weimar: Hermann Bohlaus Nache, 1939), Vol. II, pp. 386-87. [The Koschaker *Festschrift* has been republished: (Leipzig: Zentralantiquariat der Deutschen Demokratischen Republik, 1977), 3 Vols.] Savigny claimed that there was still a need for a historically grounded training even after the introduction of the codes (such as the Austrian, the Prussian or the Napoleonic), and that nothing was accomplished by believing that, because of them, the earlier law did not have to be known as thoroughly as before: "For the codes themselves are framed upon scientific principles, and can only be safely examined, purified, and perfected upon such." See Frederick Charles von Savigny, *Of the Vocation of Our Age for Legislation and Jurisprudence*, translated by Abraham Hayward, reprint of the 1831 London edition (New York: Arno Press, 1975), p. 158. Johann Jakob Bachofen made a similar point in his 1841 inaugural lecture.

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present "crisis of Roman law" does not appear as something specifically Romanist but rather as part of the general crisis of law and jurisprudence. One is reminded of the ironic wisdom of the old Goethe who, in one of his often cited remarks in his conversations with Eckermann,[19] said that Roman law might be compared to a duck, which dives and often remains hidden under the water, but always resurfaces.[20]

All European nations participated in the "reception of Roman law," at least through their law faculties and jurisprudence. This is also true of countries such as England which, owing to the common law tradition, the resistance of particular interests or other reasons, did not experience a broad reception. There are many examples in English legal history attesting to the common European fact that for many centuries jurisprudence has been based on Roman law. To be sure, there were schools of national law in England which prevented Roman law from displacing common law. But Roman law had an impact as equity law and in other ways. Still in the 17th century, Roman law, as *jus gentium*, was actually applied to the law of the sea. It is enough to recall the influence of humanism and the great names connected with the chair of civil law instituted at Oxford by Henry VIII. Among the founders of modern international law, i.e., of law divorced from theology, two of these Oxford professors were outstanding: Gentili and Zouche.[21] This legal background also explains the preeminence of the English prize court judges in the Napoleonic age, in particular the sure instinct, the "nervous courage"

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19. [Tr.] J.W. Goethe, *Conversations with Eckermann (1823-1832)*, trans. by John Oxenford (San Francisco: North Point Press, 1984), p. 255.

20. Suarez' work also provides well-formulated and well-documented examples. Salvatore Riccobono has championed the eternal validity of the structure of concepts of Roman law in Latin on December 6, 1942 in the auditorium of the University of Berlin. He did not mean ancient or classical Roman law but the *Corpus Juris Justiniani*, and he defended the commentators' *mos italicus* against the humanists' *mos gallicus*.

21. [Tr.] Alberico Gentili (1552-1608) was a Protestant Italian jurist who sought refuge in England against religious persecution and became professor of civil law at Oxford in 1587. He contributed considerably to the formulation and establishment of the principles of modern diplomacy. Most importantly, he claimed that war should be subject to law and that such law must always be founded on right reason and consent. Although his *De jure belli libri tres* (1598) was soon eclipsed by Hugo Grotius's *De jure belli ac pacis*, the first and third books of which were based on Gentili's earlier work, Gentili was the founder of modern international law. Richard Zouche (1590-1661) became professor of civil law at Oxford in 1620. Acknowledging his debt to Gentili and Grotius, he produced "the first manual" on international law.] I am indebted to László Gajzágó for his work on Zouche, who represents one of the most splendid examples of the practical application of Roman law. Gajzágó's work on the origin of modern law was published in Hungarian in 1942. [László Gajzágó, *A nemzetközi jog eredete, annak római és keresztény összefüggései, különösebben a spanyoi nemzetközi jogi iskola* (Budapest: Stephaneum Nymoda, 1942).]

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and magnificent gesture with which Sir William Scott, later Lord Stowell,[22] could expound a statute soon famous in one of the most celebrated judicial decisions in all legal history (the [Swedish convoy] case of "Maria" in 1799), namely that an English prize court judge applies not a national but a generally binding and recognized international law, and that a prize court judgment in London is no different from one handed down in Stockholm.[23]

Nevertheless, in all Europe, even in those countries where Roman law was not incorporated into common law, countless influential authors over many centuries introduced features of Roman law into the jurisprudence of all countries under such designations as "natural law," "rational law," "*jus gentium*" and "general legal theory." In so doing, they created an inventory of firm concepts, which was translated into all European languages. Through the work of all European jurists, Roman law became a *lingua franca* — the language of a jurisprudential community, a recognized model of juridical thinking, and thereby a spiritual and intellectual "common law" of Europe, without which (even on the theoretical level) there could be no understanding among jurists of different nations.[24] The cultural edifice built by the European spirit stands on this common foundation created by a common European jurisprudence. Its significance is no less than that of those great works of art and literature usually identified as the sole representatives of the European spirit. Thus even today the infinitely diverse "reception of Roman law" in every cultural sphere justifies speaking about the continuance of a European jurisprudence.

Other examples of this reception of Roman law can be mentioned only in passing. A whole system of concepts and institutions arose together with 18th and 19th century constitutional ideas and movements, which, in the wake of the 1830 and 1848 revolutions, spread to all European states and eventually to the whole world. A typical model of written constitutions developed, together with new fields of jurisprudence (e. g., a general theory of the state and a new administrative law). Meyer's

22. [Tr.] William Scott Stowell (1745-1836) became judge of the High Court of Admiralty in 1798.

23. Francis Piggott spoke of the "nervous courage" of this 1799 judgment in *Transactions of the Grotius Society*, Vol. III (1918), p. 101.

24. Joseph Franz Maria Partsch wrote: "With Roman law as part of the training in private law, jurists receive at once an introduction to the common principles of European civil law. Even today, the concepts of Roman law are throughout the world the presupposition for a type of common conceptual language." See Partsch, *Von Beruf des Römischen Rechts in der heutigen Universität* (Bonn: F. Cohen Verlag, 1920).

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system of administrative law,[25] strongly influenced by French administrative law, could be adopted by Orlando[26] in Italy because it was in line with that constitutional system. At the same time, and in close connection with the development of pandect law as well as with the reception of constitutionalism, there were numerous uniformities and reciprocities linked with the codification of civil law, criminal and trial law, criminal procedure and civil proceedings. A common mode of thinking crossed state borders, making it possible for every university-trained jurist of a European state to find his bearing in the legal world of any other state. This common development, also found in other modern arrangements such as commercial and labor law, obtains in some form or other in all European states. Nowhere can a European people elude this manifest community of European jurisprudence.

The Crisis of State Legality in the 19th Century: The Possibility of a Distinction between Law and Legislator

Despite this reception of Roman law, European jurisprudence is in a difficult and critical situation. Here I am not thinking of the repercussions of the world war, nor of the empty formulae of positivist fictions. I want to address what I would like to call the internal and immanent problem of jurisprudence. Like every major scientific development, this crisis of jurisprudence has deeper causes. Here the poet's words are appropriate:

> Who struck the first blow? Who brought the curse?
> From t'day 'tis not, and not of yesterday,
> And when first the standard was lost, our fathers,
> Did not know, and so it began.

The crisis of European jurisprudence began a century ago with the victory of legal positivism. The great turning point was the 1848 Revolution. Our fathers and grandfathers abandoned an outmoded natural law and saw a great step forward from illusion to reality in the transition to what they called "positivism." The Historical School had already struggled on somewhat false fronts against the old natural law, but its equally disputed doctrine of the scholarly sources of right, of customary law and international law, did not result in an unadulterated legal positivism

25. [Tr.] Otto Meyer (1846-1924) published his major work on German administrative law in 1895-96. See Meyer, *Deutsches Verwaltungsrecht*, third edition (Munich: Dunker & Humblot, 1924).

26. [Tr.] Vittorio Emmanuele Orlando (1860-1952) was a jurist and political figure who wrote on electoral reform and constitutional law. Schmitt refers specifically to his major work on administrative law: *Principi di diritto amministrativo* (1890), fifth edition (Florence: G. Barbera, 1921).

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on the part of the state. The essential turn in 1848 found its slogan in Windscheid's aphorism from his 1854 Greifswald university lecture: "The dream of natural law is over."[27]

Presumably, with this aphorism the Romanist and Pandectist Windscheid considered himself very realistic and positivistic although, as a Romanist and Pandectist, he was hardly capable of an unadulterated legal positivism, and he certainly did not recognize the real danger. The style of legislation at that time made it almost impossible to anticipate what is so problematic today. Windscheid was not yet in a position to see the true critical question with that unsettling clarity possible since WWI — the relation of jurisprudence to modern legislation.

Nevertheless, already in the mid-19th century there were strong signs of the critical situation ahead. The very title of a Berlin lecture delivered in 1847 and published in 1848 denied a scientific character and value to jurisprudence: "Concerning the Worthlessness of Jurisprudence as a Science."[28] The impact of such a title was all the stronger because the author was himself a renowned jurist, the state attorney Kirchmann, who later devoted himself primarily to philosophical works. Despite many references to the superiority of natural science, his account was by no means characterized by the naive transfer of positivist methods of the

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27. [Tr.: The work of Bernhard Windscheid (1817-1892) marked the end of an epoch in the development of law in Germany. The final achievement of dogmatic jurisprudence based on Roman law was his *Lehrbuch des Pandektenrechts* (Düsseldorf: J. Buddeus Verlag, 1862-1870), 3 Vols., ninth edition (Frankfurt: T. Kipp Verlag, 1906). From 1874 to 1883 he worked as a member of the Civil Code Commission. The criticism of the first draft of the code was in large part due to a revolt against Windscheid's Romanism, but the final draft owed much of its substance and terminology to him]. In context, this aphorism does not appear so apodictic and positivistic as in the isolated slogan: "For us there is no absolute law. The dream of natural law is over, and the titanic endeavors of recent philosophy have not stormed the heavens." Walter Schönfeld has polemically transformed the phrase "dream of natural law" into "the dream of positive law" in the title of his article: "Der Traum des positiven Rechts," *Archiv für die zivilistische Praxis*, New Series 15 (1932), pp. 1ff, which is a significant contribution to legal history. But 19th century legal positivism was never a dream but only an optimistic, illusory, and ultimately only an agonizing "will to be realistic."

28. [Tr.] Julius Hermann von Kirchmann, *Die Werthlosigkeit der Jurisprudenz als Wissenschaft* (Berlin: J. Springer Verlag, 1848). Cf. also *Die Werthlosigkeit der Jurisprudenz als Wissenschaft: Ein Vortrag, gehalten in der Juristischen Gesellschaft zu Berlin, von Staatsanwalt v. Kirchmann*, edited by H. E. Schroeder (Wittenberg in Meklenburg: Pythia-Verlag, 1919). Kirchman (1802-1884) was a philosopher and sociologist who entered the Prussian civil service. He rejected Hegel's dialectic, accepted Kant's critique of knowledge, and was inclined to positivism. As the author of several works on criminal and procedural law, however, he startled the legal world by proposing to free jurisprudence from obsolete methods, which he characterized as "unscientific." He specifically proposed to make law a real science by adopting what he called a "political" method.

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natural sciences to jurisprudence, such as found in other, later theses of the "unscientific character of jurisprudence,"[29] and which motivated some 19th century jurists to abandon jurisprudence as a "science" so they could at least rescue it as an "art" or "technique." Efforts at refutation and intense discussions always return to Kirchmann's remarkable lecture, which indicates the extent to which his warning of a century ago still carries weight today.[30]

How did Kirchmann understand the worthlessness of jurisprudence? The answer lies in the aphorism: "Three revisions by the legislator and whole libraries became wastepaper." With a sharp alteration, this answer became a slogan: "A stroke of the legislator's pen and whole libraries became wastepaper." Another aphorism in the same vein made the point even more brusquely and less politely: "Positive law turns the jurist into a worm in rotten wood." Kirchmann meant that jurisprudence could never catch up with legislation. Thus our predicament becomes immediately obvious. What remains of a science reduced to annotating and interpreting constantly changing regulations issued by state agencies presumed to be in the best position to know and articulate their true intent?

The relation of enacted and written law to its analytic treatment by jurisprudence is an age-old problem. It is well known that the authors of the great codes were in general not favorably disposed to scholarly commentaries on their works, which were thought to be sufficiently clear. An independent, scholarly interpretation was considered suspect and was resented. Familiar examples are the more or less polite phrases used by the authors of the *Corpus Juris Justiniani* and the 1794 Prussian Civil Code to express their objections to the interpretative clarification of their work by legal scholars. But this is only the first and still quite harmless stage of the problem. I would venture to say that both the *Corpus Juris Justiniani* and the Prussian Civil Code are imbued with jurisprudence, if in very different ways. The former is more a collection of decisions of great jurists in the manner of case law, whereas the latter is more a systematic encyclopedia with definitions and classifications in the manner of 18th century natural law, which are written in such a

29. Most radically in Anders Vilhelm Lundstedt's book, *Die Unwissenschaftlichkeit der Rechtswissenschaft* (Berlin-Grünewald: W. Rothschild Verlag, 1932). Lundstedt correctly sees the untenability of pure normativism (p. 182).

30. *Die Werthlosigkeit der Jurisprudenz als Wissenschaft: Eine Rede des Staatsanwalts Julius Hermann v. Kirchmann aus der Jahre 1847*, edited and introduced by Gottfried Neesse (Stuttgart and Berlin: W. Kohlhammer Verlag, 1938).

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way as to be accessible to all. In both cases, the "legislator" had become a juridical scholar, and the struggle between legislation and jurisprudence evolved into a rivalry between two brothers with similar goals and similar means. The great French codifications from the time of Napoleon I and their numerous receptions in the most diverse countries, as well as the 1811 Austrian Civil Code and many other well known codes, all evidence the possibility of a meaningful jurisprudence of written law.

In this respect, 19th century European jurists could still feel comparatively secure, since even after 1848 and for the rest of the 19th century the formulating and writing of laws as well as the method and tempo of legislation remained closely related to jurisprudence. This was particularly the case with civil codes and trade law, but it was also true for criminal and trial law. The German codification of civil law, i.e., the 1896 civil code, was considered too "scholarly" and too much in the pandectic tradition. It was not regarded as an actual legal code because it appeared to be nothing more than a textbook and a "scholastic system."[31] The 1907 codification of Swiss civil law was more favorably received, but it too was the work of a prominent legal scholar and professor of jurisprudence, Huber.[32] In the 19th century, commentaries on great civil codes were still written solely by jurists. What is most important is that the stroke of the legislator's pen, which transformed such writings into wastepaper and condemned the resulting commentaries to a similar fate, was not an everyday occurrence. On the contrary, it turned out that the sphere of jurisprudential interpretation and systematization of positive law could be so extraordinarily wide that the positivism of existing state law need neither exclude an independent juridical practice nor an independent juridical science. The law itself, published in the authentic words of the official legal record — the authoritative text — appeared as a consistent, impersonal and objective entity in contrast to the mere contents and motives of the law in which the legislators' personal opinions were often evidenced in contradictory ways. Thus there arose a sharp distinction

31. See Beyerle, "Schuldenken und Gesetzeskunst," *Zeitschrift für die gesamte Staatswissenschaft*, *op. cit.*, p. 213n.

32. [Tr.] A law professor at Basel, Halle and Berne, Eugen Huber (1849-1923), wrote on medieval German law. Influenced by Rudolf Stammler, he wrote several works on the philosophy of law. But he is best known as the author of the Swiss Civil Code, which the government authorized him to draw up in 1892. See the *Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907* (Berne: A. Francke Verlag, 1908). See *The Swiss Civil Code*, English version with vocabularies and notes by Ivy Williams (Oxford: Oxford University Press, 1925). Entirely his own work, Huber's code gave less weight to Roman law than to the 1900 German Civil Code. More than a mere unification of the laws of the cantons, it was a practical amalgamation of historical, social and ethical elements.

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between the law's objective meaning and the subjective intent of its many authors, the legislators. The intentions of the law and of the legislators, as the authors of the law, could conflict.

The distinction between objective law and its authors' subjective intent was of the greatest practical political significance in those countries in which the legislative body — parliament — was split into several different political parties. Here the legislator — the legislative body, parliament — constituted a problematic political unity. The law became the majority decision of a divided legislative body. This majority decision was in all important respects a difficult and often unclear compromise of heterogeneous party coalitions, i.e., a law created by shifting parliamentary majorities. That is the typical situation of legislators in a pluralist party-state. That was the case in Germany after Bismarck's resignation in 1890 (actually, such was already the case after 1878, because the German parliament no longer had a majority party after the National Liberals lost out). Thereafter, the majority was constituted through compromises from case to case and law to law, often on the basis of contradictory motives.[33] A similar problematic situation arose in other European countries, where it often led to obstruction crises in states with national and ethnic (*völkisch*) parties (such as Austria-Hungary). In such cases, the law had to be honed into a unified and objective force, uprooted and made autonomous, so that its uniform "will" would not be destroyed by the internal antagonisms of the legislative body. The law as an impersonal and objective force isolated from its motives became a bridge over the abyss of internal political strife. Cleansed of all party-political antagonisms, the objective norm embodied, so to speak, the objective reason of political unity. However, along with juridical practice, jurisprudence became an important, indispensible agency of this objective reason, of this logical unity of the will of the law, which independently confronted the divided will of the many parties involved in legislation.[34]

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33. French democrats were quick to criticize this situation. See Maxime Leroy, *La loi: Essai sur la théorie de l'autorité dans la democratie* (Paris: V. Giard and E. Briere, 1908), p. 324f.

34. The scholarly consideration of this distinction between the law and the author of the law began for the modern age with some theses of Carl Georg von Waechter in 1835. [cf. Bernhard Windscheid, *Carl Georg von Waechter* (Leipzig: Duncker & Humblot, 1880).] A few years later, Robert von Mohl published an article outlining all the arguments: "Über die Benutzung der ständischen Verhandlungen zur Auslegung von Gesetze," *Archiv des Criminalrechts* (1843), reprinted in a collection of Mohl's articles: *Staatsrecht, Völkerrecht und Politik: Monographien von Robert von Mohl* (Tübingen: Verlag der H. Laupp'schen Buchhandlung, 1860-1869), 3 Vols. [Robert von Mohl (1799-1875) has the distinction of having banished the phantom of a general German territorial public law and of having thereby fashioned a model system of public law. He was also a pioneer in

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An aphorism that might otherwise have appeared paradoxical and hyper-critical now acquires a very concrete and practical meaning: The law is wiser than the legislator. Great jurists have cited it, even in stronger language: The law is *always* wiser than the legislator.[35] Although rather blunt, such an aphorism points to a restraint on the part of the legislator and allows the possibility of a jurisprudence which, while positivistically dependent on current law, still identifies an objectified meaning independent of its subjective motives. The distinction of law and legislator in the sense of the antithesis of the law's objective intent and the legislators' subjective interests allowed jurisprudence a significant flexibility for commentary and interpretation. In view of an increasingly problematic legislator, owing to an internally divided legislative body, the jurist acquired a new and independent authority and an almost legislative dignity. Jurisprudence came to represent the unity of the legal will as opposed to the multiplicity of egoistic parties and factions. As soon as it strayed from the narrow bridge of this positivism of the enacted norm it either fell into Jhering's[36] naturalistic utilitarianism

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administrative law. As a political figure, he occupied a position he characterized as that of an English Whig, a Frenchman of the Left Center, and an American Federalist. As a political scientist, he concerned himself with questions of the relation between society and the state.] With few exceptions, the voluminous literature beginning around 1900 on the theme of "the law and the judge," the whole *Methodenstreit* and the Free Law Movement led by practitioners of civil or criminal law failed to grasp the significance of constitutional questions. Here the shrinking horizon of civil law positivism revealed the dangerous naiveté resulting from the isolation of positive norms.

35. Rudolf Sohm wrote: "It should be kept in mind that the code is always better, wiser, clearer and richer in content than the ideas of the legislator, no matter how brilliant he is. This is the significance of jurisprudence — that it does not merely interpret the law but enriches and elaborates it. Our civil code, enriched and elevated by the potency of German jurisprudence, becomes still better and intellectually richer than the mind of its creator." See Sohm, "Die deutsche Rechtsentwicklung und die Kodifikationsfrage," in *Zeitschrift für das privat- und öffentliche Recht der Gegenwart*, Vol. I (1874), p. 277. "The law is *always* wiser than its author." So wrote Max Ernst Eccius in his introduction to the last editions of *Preussisches Privatrecht*, following Franz Förster, seventh edition of the original and fourth edition of the new reworking (Berlin: G. Reimer Verlag, 1896-1897), 4 Vols. Karl Binding also wrote that "The law is *often* smarter than the legislator." See Binding, *Die Normen und ihre Übertretung*, second edition (Leipzig: W. Engelmann Verlag, 1890), Vol. I, p. 203n.

36. [Tr.] Rudolf von Jhering (1818-1892) was the most encyclopedic mind of German law in the 19th century and combined jurisprudence with sociology. Not only did he focus on the individual, he made society the supreme concept of his consideration, whereby the state was in a subordinate position. Unlike most of his contemporaries, who were steeped in Roman law and attributed absolute powers of disposal to the owner, Jhering insisted that ownership must be subordinated to social needs. The motto for his celebrated work on Roman law was: "Through Roman law but beyond it." See Jhering, *Der Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung* (Leipzig: Breitkopf

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or, like Liszt's[37] criminology, into a sociological positivism whereby its essence as jurisprudence was endangered from another direction.

The Crisis of State Legality in the 20th Century: The Motorized Legislator

If in the 19th century the situation of jurisprudence was in many respects favorable, this changed after WWI. After 1914 all major historical developments in all European countries contributed to the acceleration of legislation. The passing of new legislation became faster and more streamlined, the road to legal regulation shorter, and the role of jurisprudence accordingly smaller. War and its aftermath, mobilization and demobilization, revolution and dictatorship, inflation and deflation have, despite all other differences, led in all European countries to the same result — that the passing of new legislation has become simplified and accelerated. The trend consisted in ever new and broader authorizations, through which legislative bodies delegated authority to issue legally binding "decrees" and "directives" which displaced the law. Constitutional qualms with respect to authorizations [enabling acts and the like] accordingly increased, because legislative bodies are, after all, constitutionally called upon to make laws and not to empower others to do so. As Locke, the philosophical founder of modern constitutional law, put it: "Make laws but not legislators." At the 1921 German Conference of Jurists, Triepel maintained that the "misfortune" of the displacement of law by decree had already begun in Germany with the enabling act of August 4, 1914. That was indisputably a prominent date in the transformation of the essence of law. Triepel read the following passage from a letter his great teacher, Binding,[38] had written to him shortly before his death: "The next great task is the battle against the directive in arrogating to itself the status of law."

Many jurists, working in less troubled legal areas, ignored the danger

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& Härtel, 1852-1865), 3 Vols. Schmitt refers specifically to Jhering's most important work, where he argues that egoism is the unavoidable point of departure for all law. See Jhering, *Der Zweck im Recht* (Leipzig: Breitkopf & Hartel Verlag, 1877-1883), 2 Vols.

37. [Tr.] Franz Eduard von Liszt (1851-1919) was the leader of the sociological school of criminal law.

38. [Tr.] In addition to writing on the history of Roman and German law, Karl Binding (1841-1920) was also an outstanding theorist in penal law. Refuting the accepted vague notions that penal law prescribes behavior, he showed in his "theory of norms" that the legal propositions by which the state demands obedience and guides individual action is independent of and logically prior to penal law, and that penal law is a secondary form of control with the sole function of determining the extent to which behavior contrary to norms involves punishability as a special legal consequence.

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and were content with such aphorisms as "Public law passes, private law persists," without noticing that the basic concept of their own positivism — law itself — was in question. As a true jurist, not only of criminal but of constitutional law, Binding had a sure intuition for the structural transformation of the concept of law as well as for the mortal danger facing all existing normativism. Nevertheless, this development proceeded apace in all countries and overcame all obstructions, especially affecting economy, finance, and taxation, i.e., the homeground of the formal and constitutional concept of law. In Germany the very first emergency tax decree of December 7, 1923, immediately following the end of inflation, was promulgated not on the basis of an enabling act but on Art. 48 of the Weimar Constitution, i.e., as a dictatorial measure of the president, because an enabling act was not passed fast enough. At the end of 1923, this appeared to be nothing more than a minor and passing inconvenience because the two subsequent emergency tax decrees following the currency stabilization could be tied to a formal enabling act (of December 8, 1923). At the 1924 Conference of the Association of Teachers of German Constitutional Law in Jena, the overwhelming majority were totally blind to the structural transformation of legislative procedure then in progress. The financial reform of 1925, the work of the Secretary of State, Popitz, was still the result of an orderly legislative procedure. A few short years later, however, the method of enabling acts was hopelessly out of control in Germany, and after July 1930, financial and economic regulations were in general enacted on the basis of Art. 48 of the Weimar Constitution, i.e., as dictatorial measures of the president.[39]

In comparison with Germany, the Third Republic of victorious France

39. For a comparative overview of the most recent developments in the delegation of legislative powers, see *Le nationalsocialisme allemand: Ses doctrines et leurs réalisation. Avertissement au lecteur par Eduard Lambert*, Institute of Comparative Law at the University of Lyon (Paris: Librairie générale de droit & de jurisprudence, 1938). With respect to the constitutional side of the question, Johannes Popitz wrote: "Even with the sharpest constitutional scrutiny, one must conclude that resort to Art. 48 [of the Weimar Constitution] hangs exclusively on the extent of an emergency. If the emergency is so great that something must be done so that the state will not financially collapse, then one should also not shrink from using Art. 48 to impose taxes. At the same time, however, it should be understood that such a step is only justifiable in the gravest of times, such as are hopefully behind us, and of course should only be undertaken with the greatest caution." See Johannes Popitz, "Die staatsrechtlichen Grundlagen des öffentlichen Finanzwesens," in *Recht und Staat im neuen Deutschland: Vorlesungen gehalten in der deutschen Vereinigung für staatswissensschaftliche Fortbildung im Namen des Vorstandes der Vereinigung*, edited by Bernhard Harms (Berlin: R. Hobbing Verlag, 1929), 2 Vols.

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appeared to adhere more closely to constitutional provisions. But legislative delegations proceeded apace. Of course, in the land of the legists and such great constitutional jurists as Esmein, Hauriou, and Duguit,[40] there were constitutional qualms. But even here, as in other countries, some limitations were meant to be added through artful distinctions of simplified legislation and authorized delegation whereby the constitutional conscience was to be appeased. All in vain! As in other countries, regardless of whether they were belligerents or neutrals, victors or vanquished, parliamentary states or so-called dictatorships, in France also the compulsion for legal regulations to accomodate the tempo of changing conditions was irresistible. The warning of England's Chief Justice, Lord Hewart, against the "New Despotism" (1928) changed nothing. As late as mid-May 1944, the troubling question of "Executive Powers" was raised in the English parliament without adding anything to what had already been debated in Germany, France or other European countries. What Kirchmann had predicted almost a century before, that jurisprudence could never catch up with positive law, proved correct, and more so than anyone might have expected.

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40. [Tr.] Adhémar Esmein (1848-1913) was perhaps France's greatest legal historian. He began from perfected institutions and traced them back in order to determine their original features. Maurice Hauriou (1856-1929) was a jurist and sociologist who defended individualism and sought to base his doctrines on Catholic dogma. According to Hauriou, the state has no other function than to guarantee the natural rights and laws of an "individualistic order." In the political order, the idea of individualism implied the recognition of and respect for the supremacy and autonomy of the executive, whose staff forms an elite by reason of its ability and of the eminent value of its will. The people and their representatives in parliament should limit their activities to control the actions of the executive and not hamper his freedom to command. Hauriou's name became associated with a "theory of institution," concerned with permanent organizations which serve the collective interest and which as a whole constitute the individuality of the state. Schmitt considered Hauriou's "theory of institution" the first systematic attempt at a restoration of what he called "concrete order thinking" since the victory of legal positivism. See Carl Schmitt, Introduction to the second edition (1934) of *Politische Theologie. Vier Kapitel zur Lehre von der Souveranität*, third edition (Berlin: Duncker & Humblot, 1979), p. 8.; also Schmitt, *Über die drei Arten des rechtswissenschaftlichen Denkens* (Hamburg: Hanseatische Verlagsanstalt, 1934), pp. 54-55. A jurist and political theorist, Léon Duguit (1859-1928) is known for his application of philosophical positivism to jurisprudence and political theory. His aim was to evolve a theory of law and the state based solely on experimental data. According to his objective concept of law, law exists as a body of rules not only arising from social relations but determined by them. The primary fact of law is thus not subjective right but the objective rule of law arising from social relations. This conception led Duguit to reject the German theory of law as a creation of the state — a sovereignty subject only to its own limitations. Since the state is merely a group of governing individuals, it has no right to sovereignty. The most complete development of Duguit's doctrines is found in *Traité de droit constitutionnel*, third edition (Paris: Boccard, 1927-1930), 3 Vols.

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The legislative machine increased its tempo enormously, and the commentaries and interpretations of positivist jurisprudence could hardly keep pace. Long before the full unleashing of decrees, the scholarly and systematic commentaries of professors of jurisprudence were increasingly replaced by the practical commentaries of private lawyers or experts in the ministries (although a large number proved to have had a splendid legal training).

It has been said that the decree is "motorized law." Should jurisprudence then follow suit and seek to "motorize" itself? Every scholarly jurist immediately recognizes the impossibility of such fellow-traveling. But the motorization of law into mere decree was not yet the culmination of simplifications and accelerations. New accelerations were produced by market regulations and state control of the economy — with their numerous and transferable authorizations and subauthorizations to various offices, associations and commissions concerned with economic decisions. Thus in Germany, the concept of "directive" appeared next to the concept of "decree." This was "the elastic form of legislation," surpassing the decree in terms of speed and simplicity. Whereas the decree was called a "motorized law," the directive became a "motorized decree."[41] Here independent, purely positivist jurisprudence lost its freedom of maneuver. Law became a means of planning,[42] an administrative act, a directive. Such a directive is issued by an authorized agency but not publicly announced and often only sent to those immediately concerned. It can be changed overnight or adjusted to rapidly changing conditions. Thus it no longer allows an independent third force to come between the directive and the issuer, between the measure and the one who orders it, as was still possible in the 19th century between law and legislator. One can perhaps rightly say that the law is wiser than the legislator. But it is something else to claim that a directive is wiser than the agency best informed about the concrete situation.

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41. See Karl Rieger, "Rückblick und Ausblick auf die Form der wirtschaftlichen Gesetzgebung," in *Ministerialblatt des Reichswirtschaftsministerium* (January 28, 1941), p. 18. See also Werner Weber in *Zeitschrift für die gesamte Staatswissenschaft*, Vol. 102, pp. 116f.; Kurt Emig in *Deutsche Rechtswissenschaft*, Vol. 7 (1942), pp. 220f.; and Wolfgang Gähtgens, "Die rechtlichen Grundlagen der Waren-Bewirtschaftung," in Friedrich Dorn, et al., *Probleme der gelenkten Wirtschaft*, edited by the Wirtschafts-Hochschule (Berlin: Walter de Gruyter Verlag, 1942), p. 52: "The directive as the most elastic form of legislation."

42. Georgios Demetriou Daskalakis deals with "the law as a planning tool" in his Berlin *Habilitationsschrift* [*Das Gesetz als Seinsordnung und Planverwirklichung* (Jan. 24, 1939)].

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Savigny as an Alternative Paradigm

These developments have created a critical situation for jurisprudence, which cannot enter into a race with the motorized methods of decrees and directives. It cannot keep up. Rather, it must become aware of the fact that it has become the last refuge of law. It must remember its own task and seek to safeguard the unity and consistency of law, which is being lost in the frenzy of legal impositions. Thus it must eschew excessive haste. It should retain its inner composure, calm observation and the most thorough research.

A grand example shows what can be accomplished when jurisprudence examines its own task and dignity. I mean the example of Savigny and his famous 1814 treatise: *Of the Vocation of Our Age for Legislation and Jurisprudence*.[43] Together with its 1816 sequel,[44] this treatise addresses directly our present problem — not in terms of its temporal theses but in terms of its fundamental standpoint, which is more relevant today than at the time it was written. In a deeper sense, it is also more relevant than Kirchmann's lecture with its positivistic, if not nihilistic denigration of the scientific character of jurisprudence.

If we speak of Europe, it is necessary to mention concrete names and to provide a list of great Europeans in order to give the concept some content and to distinguish it from an ambiguous program. Here few names are more deserving of being on such a list than Savigny. This family of imperial nobles in Lothringen came, as did Goethe and Baron vom Stein, from the old Reich. He was a famous and influential jurist and historian, at once the revitalizer of Roman law and a herald of the theory of the *Volksgeist* (spirit of the people) as the creator of law and language. He was the leader of a Historical School, which was by no means merely another school of Roman law. At the same time, he was the founder of modern international private law,[45] a scholar of enormous knowledge, a true aristocrat and man of the world. Thus it is not an accident that Savigny was the first to provide an answer on behalf of jurisprudence in his 1814 treatise, which was an advance

43. Friedrich Carl von Savigny, *Vom Beruf unsrer Zeit für Gesetzgebung und Rechtswissenschaft* (1814). Reprint of the third edition of 1840 (Freiburg: Akademische Verlagsbuchhandlungen von J.C.B. Mohr, 1892); see the English edition, translated by Abraham Hayward: Reprint of the 1831 London edition (New York: Arno Press, 1975).

44. Friedrich Carl von Savigny, "Stimmen für und wider neue Gesetzbücher," *Zeitschrift für geschichtliche Rechtswissenschaft*, Vol. 3, No. 1 (1816), included as an appendix to the second edition of *Vom Beruf unsrer Zeit*. The article contains a discussion of other articles by Friedrich Justus Thibaut, Ludwig Feuerbach, B.W. Pfeiffer, et al.

45. Cf. Max Gutzwiller, *Der Einfluss Savignys auf die Entwicklung des Internationalen Privatrechts* (Fribourg: Kommissionsverlag/Universitätsbuchhandlung, 1923).

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in his own time but is even more relevant today.

The dispute concerning Savigny's significance has never ended. His death in 1862 was marked by testimonials to a great personality. Rudorff wrote: "We will never see his like again,"[46] and even Jhering was very respectful in his rather journalistic obituary. So long as the science of pandect law held its place, Savigny's name was sacrosanct. That changed with the new century. Thirty years ago a representative of the Free Law Movement[47] asked "What is Savigny to us?" and the answers appeared to be increasingly negative.[48] The victories over Savigny celebrated by a few Germanists in the course of their old struggle with the Romanists were certainly only posthumous 19th century affairs and promoted a strange alliance between Germanist jurisprudence, of which Savigny himself was one of the founders, and heterogeneous Free Law

46. [Tr.] Adolf August Friedrich Rudorff (1803-1878) was a prominent legal scholar. See Rudorff, *Kritik der Schrift des Staatsanwalts v. Kirchmann über: Die Werthlosigkeit der Jurisprudenz als Wissenschaft. Von einem Lehrer dieser Wissenschaft* (Berlin: Plahn Verlag, 1848).

47. [Tr.] The Free Law Movement was not satisfied merely with Jhering's critique of the intellectual foundations of legal theory and legal practice. It was much more concerned with a renewal of the methods of jurisprudence and juridical lawfinding. In opposition to legal positivism, it insisted that the decision of a legal case could no longer be derived from abstract and logical deduction, that statutes could no longer be considered the dominant source of law. It asserted that "free law" should not only be represented through judicial decision, through usage, but also through judicial ruling. Specifically, the Free Law Movement sought to widen the circle of the sources of the law, and in so doing it raised the question of what this meant with respect to the judge's relation to the law. Should he have the right to creative lawfinding only when the law is valid, or should he have the right to decide against the wording of a legal norm? This question was raised most radically by Hermann Kantorowicz in his 1906 pamphlet on the struggle for jurisprudence. See Gnaeus Flavius, a.k.a. Hermann Kantorowicz, "Der Kampf um die Rechtswissenschaft," in Kantorowicz, *Rechtswissenschaft und Soziologie: Ausgewählte Schriften zur Wissenschaftslehre*, edited by Thomas Würtenberger (Karlsruhe: Verlag C. F. Müller, 1962). In the wake of Nietzsche and Schopenhauer, Kantorowicz formulated his theory of free law in terms of feelings and the will, and saw the opening of a "voluntaristic epoch" of jurisprudence. He argued that conceptual jurisprudence — a creation of the Historical School — had succeeded in overcoming the metaphysics of natural law but then capitulated to its methods, that the task of free law was to overcome those methods but remain true to the historical conception.

48. Hans Thieme, "Der junge Savigny," *Deutsche Rechtswissenschaft*, Vol. 7 (1942), pp. 53f. Cf. Hans Schneider, "Die Entstehung des preussischen Staatsrat 1806-1817: Ein Beitrag zur Verfassungsreform Preussens nach dem Zusammenbruch," *Zeitschrift für die gesamte Staatswissenschaft*, Vol. 102 (1942), pp. 480-529. Schneider investigated Savigny's participation in the legislative work of the Prussian Privy Council (*Staatsrat*) for the first time on the basis of archival sources. The great jurist appears almost as a passive mirror in which the opposing sides are balanced circumspectly to the point of a stalemate. [See Hans Schneider, *Der Preussische Staatsrat 1817-1918: Ein Beitrag zur Verfassungs- und Rechtsgeschichte Preussens* (Munich and Berlin: C.H. Beck'schen Verlagsbuchhandlung, 1952).]

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jurists and sociologists with little Germanist inclination. Nevertheless, in recent years the negative evaluation of Savigny continues. There are increasingly charges that he and his theory are not sufficiently activistic, and complaints concerning his all too passive manner of pure contemplation. It is generally alleged, especially in regard to his 1814 treatise, that Savigny did nothing more than retard the codification of German civil law for almost a century, even though ultimately he could not stop it. Thus he simply stood on the wrong side of the development of legal history; his "historical" tendency had only an antiquarian and reactionary meaning, because it stood in the way of the pressing historical development of the codification of state law. As a whole, his undeniable success is seen as short-lived, as the victory of a professor of jurisprudence over the legal experts of the high ministerial bureaucracy. Such could only appear as a Pyrrhic victory to a legal positivist, and one he regarded with the utmost suspicion.

This widespread opinion that only a positivist jurisprudence is feasible is a product of the late 19th century. In this narrowing [of jurisprudence] into mere technique, the progress of law is confused with the increasing promptness of the legislative machine. At that time there still was no premonition of the constitutional problematic of the concepts of law and legislator, legality and legitimacy. One spoke of "law" as the most perfect thing in the world, and derogatorily dismissed Savigny as having denied legislation as a vocation of the age. That his 1814 treatise was an existential self-reflection of jurisprudence, that it was a great call to jurisprudence to be more than the guardian of state law, went unacknowledged, whereas his critique of state codification only sought to clarify jurisprudence as a vocation, to rescue the dignity of a legal estate, and to contain the dangers of mere positive law.

Above all, Savigny's theory of the sources of law had a thoroughly existential meaning, through which he placed new and strong emphasis on "source." Savigny and his specific concepts of "historical" and "positive" can be understood only by taking seriously the meaning of "source" in terms of its relevance for the existential struggle of jurisprudence. Law as concrete order must not be separated from its history. True law is not imposed; it arises from unintentional developments. It reveals itself in the concrete form of jurisprudence, through which it becomes conscious of its development. For Savigny, the jurisprudential concept of the positive is bound to a particular type of "source" protected by jurists. Law emerges from this "source" in a specific way, as something not merely legislated but given. The later positivism knows no origin and has no home. It recognizes only causes or basic norms. It seeks to

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be the opposite of "unintended" law. Its ultimate goal is control and calculability.[49] For such a positivism, "source" is at best a non-binding metaphor for a validity imposed arbitrarily. In general, to speak of "source" must appear meaningless, if not ludicrous. But for Savigny, "source" is the true origin and true home of law. It is neither a cistern for a pre-scientific, discretionary system of law (cadi justice), nor a sewage system for schemes without spatial or legal boundaries.[50]

I would like to stay for a moment with Savigny's doctrine of the sources of law, because everything depends on achieving the proper perspective with respect to the state's monopoly of legality. Of course, the great scholar understood the various and sundry meanings of the "sources of law" and how they were being used, which he described in detail in his *System of the Present Roman Law*.[51] For Savigny, there were sources of law in the sense of legal institutions and accepted rules, and in the sense of purely historical "sources of jurisprudence." Today, that sounds trivial. But Savigny maintained even-handedly that "in most cases both meanings coincide." He observed that most writers make no clear distinction between the "legal sources" of the *Corpus Juris* and 13th and 14th century German law books, and, with the same detachment, proceed to add: "We need not reproach these authors on this score."

Jurisprudence is itself the true source of law. A given law is only its material, which it shapes and refines. Scholarly form, which it alone can provide, seeks to reveal the inherent unity of the material of law and thereby to engender "an organic life which transforms its material." Savigny understood the value of a good piece of legislation, but he knew, first, that a legislative act is only one of many manifestations of the law in concrete orders and, second, that the essence and value of the law lies in its stability and durability or, as Popitz once put it with a certain elegant skepticism, in its "relative eternity." Only then does the legislator's self-limitation and the independence of the law-bound judge find an

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49. This is expressed in the often cited aphorism of August Comte, the founder of positivism as a religion and a *Weltanschauung*, which postulates with almost typical naive legalism: "*voir pour savoir; savoir pour prévoir; **prévoir pour règler***!"

50. "Schemes without spatial or legal boundaries" refers to Francisco Javier Conde's work. His theory of the three determinants of the concept of political reality — schemes, spatial delimitation, and law — is based on and developed from the great historical forms of the Greek *polis*, the *Imperium Romanum*, the *Civitas Christiana* and the modern state. See his *Theoria y systema de las Formas Politicas* (Madrid: Instituto de Estudios Politicos, 1944).

51. Friedrich Carl von Savigny, *System des heutigen Römischen Rechts* (Berlin: Veit & Comp., 1840), Vol. I, Chapters 2 and 3, pp. 13ff.; *System of the Modern Roman Law*, Vol. I, trans. by William Holloway, published in 1867 by J. Higginbotham in Madras, India; new edition (Westport, CT: Hyperion Press, 1979).

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anchor. The experiences of the French Revolution showed how an unleashed *pouvoir législatif* could generate a legislative orgy, and Napoleon's handling of law professors was a symptom of the connection of all these questions with the plight of jurisprudence. At that time in Germany, however, the alternative, a legal practice based on case law, was also hardly conceivable. Thus a jurisprudence based on this theory of historical sources was meant to become a specific authority, an autonomous agency of legal development, and the soul of a German juridical estate. On the one hand, this development was conceived as a normal growth assured by continuous reference to such sources, which in turn guaranteed its continuity and protected its independence; on the other, the inexhaustible riches of the historical sources and their manifold applicability contained the potentiality for all necessary changes and renewals.[52]

In view of Savigny's lofty goal, the situation of European jurisprudence generally looks like this: England is the example for the rule of a *Rechtsstand* of practitioners. Here a legal fraternity finds the source of law in the "precedents" set, borne and vouchsafed by this same *Rechtsstand*. They provide the foundation of the jurist's professional existence as the preserver of the law. This "rule of law" is a closed order and, as such, constitutes the predominance of a status group independent of the state. It is neither normativism nor is it something that on the Continent was later called a *Rechtsstaat*. Essentially, it is not a creation of the state but an independent estate grounded in society. In this sense, it is a social, professional and, in its specific legal basis, an "estate" and not a "state." The historical counter-concept to this *Rechtsstand* is the Continental *Gesetzesstaat* [legislative state].[53] The land of the legists, France, provides the

52. One magnificant passage in Savigny's treatise reads as follows: "I now proceed to state the higher object, which is attainable by the same course. Let jurisprudence be once generally diffused amongst the jurists in the manner above-mentioned, and we again possess, in the legal profession, a subject for living customary law, consequently, for real improvement; the practice of our courts justice was but a clumsy substitute for this customary law; the practice of law-faculties the clumsiest of all. The historical matter of law, which now hems us in on all sides, will then be brought under subjection, and constitute our wealth. We shall then possess a truly national law, and a powerful expressive language will not be wanting to it. We may then give up Roman law to history, and we shall have, not merely a feeble imitation of the Roman system, but a truly national and new system of our own. We shall have reached somewhat higher than to a merely sure and speedy administration of justice; that state of clear perceptiveness which is ordinarily peculiar to the law of young nations, will be combined with the height of scientific development." [*Of the Vocation of Our Age for Legislation and Jurisprudence*, *op. cit.*, pp. 154f.].

53. Law (*Gesetz*) and state are corresponding concepts in legal history. There is thus only a *Rechtsstand* and only a *Gesetzesstaat*. "*Rechtsstaat*" is a term that arose in Germany shortly before 1848, in the critical period in which an unproblematic legal sphere split into legality and legitimacy — a distinction that today can be denied only by artificial

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example of a positivist transformation of law into state codification. Here the typical source of law is an act of state. State and law belong together in a specific sense. The centralized *Gesetzesstaat* precludes an independent *Rechtsstand*, not to mention a "*Gesetzesstand*." In a *Gesetzesstaat* the judge becomes a state official applying state law, and stands opposed to a non-state "free" lawyer rooted in civil society. In Germany, however, the astounding attempt was made through Savigny to make jurisprudence the essential preserver of law. With Savigny, the English lawyers of a society grown rich and the French jurists of a centralized legislative state were confronted with the jurisprudential traditionalism of a European Reich. Savigny's idea of "source" is to be understood only in this existential sense, and not as a historical science or as a positivism of measures enacted in some way or other. Furthermore, it is to be understood only in the sense in which he himself used the words "historical" and "positive" — not in the sense of the later positivist conceptual transformations of the so-called Historical School.[54] This typical German effort — to make not a "positive" legal science but a historically aware jurisprudence the guardian of law and the core of a true *Rechtsstand* — foundered in and *on* the 19th century. However, this neither diminished its European significance nor destroyed its contemporary relevance.

To avoid any misunderstandings, it should be emphasized that I am not promoting any "Back to Savigny" movement. Savigny's 1814 call to jurisprudence is only a paradigmatic event, which should be kept in mind in order to understand correctly the present plight of European jurisprudence. We know that there is no such thing as a restoration of past situations. A historical truth is true only *once*. The concept of the historical is itself subject to transformations and reinterpretations; its realizations in various areas of intellectual life take many different forms. While state legal positivism in Germany at the turn of the 19th to the 20th

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means. The German language has often failed to provide adequate legal terms. Also the word "*Gesetzgeber*" [lawgiver or legislator] is unfortunate because it confuses the distinction between *setzen* [to enact] and *geben* [to give, in the sense of the given law].

54. Savigny's own characterization of his "rigorous historical method of jurisprudence" should be recalled here because, unfortunately, it seems to have been forgotten: "Its character does not consist, as some recent opponents have strangely maintained, in an exclusive admiration of its Roman law; nor in desiring the unqualified preservation of any one established system, to which, indeed, it is directly opposed, as has been shown by the above judgment on the Austrian Code. On the contrary, its object is to trace every established system to its root, and thus discover an organic principle, whereby that which still has life may be separated from that which is lifeless and only belongs to history." *Of the Vocation of Our Age for Legislation and Jurisprudence*, *op. cit.*, p. 137.

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century rejected every consideration of substantive problems as "unjuridical" and thereby deprived them of all intellectual impact, a Historical School in the economic and social sciences led by Schmoller[55] was able to significantly influence German conceptions of law and the state.

Quite apart from this internal transformation is the fact that today our knowledge of historical sources is infinitely wider and deeper than in Savigny's time, owing to the many crises we have experienced since then. The *sources* enriching the history of Roman law itself have been infinitely broadened; and our knowledge has not only been externally expanded but internally enriched with a new appreciation for anthropological and mythological problems. In the 19th century, Savigny's true heir was neither Puchta[56] nor Jhering but Bachofen,[57] even if he left the preoccupation of the age behind and withdrew to the fertile depth of mythological research.[58] At issue today is not some reactionary retreat, but rather the apprehension of a wealth of new knowledge which can become fruitful for jurisprudence and which must be acquired and used creatively. In view of this task, let the dead positivism of the 19th century bury its dead.

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55. [Tr.] Gustav von Schmoller (1838-1917) was the leader of the so-called "younger" Historical School. Originally a student of the English school of classical economics and of the older German Historical School, particularly of Wilhelm Roscher, he first sought to cultivate the inductive method of the accumulation of historical and descriptive factual material and to develop economics as a social science by relating it to history, political science, sociology, etc. The concept of "justice" in the economic system was to be realized through a paternalistic policy of social reform furthered by the state and by all social groups. Social science was to illuminate the path to a more equitable distribution of income as the guiding principle of social reform and for the attainment of the objectives of social policy, which was the goal of the Verein für Sozialpolitik founded by Schmoller and others in 1872 and directed by him alone after 1890.

56. [Tr.] Jhering's teacher, Georg Friedrich Puchta (1798-1846), studied philosophy with Hegel, but subsequently came under the influence of Savigny and Schelling. He began teaching Roman and canon law in Erlangen and, in 1842, became Savigny's successor in Berlin. By formulating and arranging Savingy's ideas in a number of textbooks, he exerted a tremendous influence on his own and subsequent generations. Savigny himself accepted Puchta's views and formulae in his later works concerning the fundamental doctrines of the Historical School.

57. [Tr.] Johann Jakob Bachofen (1815-1887) studied law and legal history in Basel, Berlin (where he came under the influence of Savigny), Oxford, Cambridge and Paris, and upon his return to Basel was appointed to the chair of Roman law at the university. But he resigned in 1844 to devote himself to the history of art. His major interests, however, were in ancient Roman law and Greek antiquity, and it was in these investigations that he found numerous myths and reports of a very early matriarchate, whose origin he attempted to explain by collecting and comparing all the relevant material in the writings of the ancients.

58. Bachofen's marvelous autobiographical account of the years 1840-1854 was occasioned by Savigny's repeated entreaties. His friendship with Jhering lasted only a short time (1846-1851) and was for Jhering of no consequence.

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What is the secret of the extraordinary effect of Savigny's appeal to jurisprudence in Germany and in Europe? From which deep source sprang the power of such an appeal, which even today has not lost its impact? In order to avoid possible misunderstandings, I emphasize again that neither the content nor the logic in Savigny's 1814 treatise are convincing or compelling. Despite all its stylistic beauty, the attentive reader can readily notice the most blatant contradictions. Savigny proclaims the doctrine of an unconsciously developing, creative *Volksgeist*, and yet he is the founder of a Historical School in the narrowest sense, a "natural law of the historically given" (Max Weber)[59] — a tendency that ultimately led to an archeological, philological and papyrological scholarship, which appeared as a peculiar anachronism and whose contact with the continuously growing and vital *Volksgeist* was, at best, indirect. Such intellectual epigones of Savigny as Puchta should not alone be blamed for what followed. The failure lay already with Savigny and the dangerous word "positivism." The parallel between law and language, which Savigny used as a decisive argument, should have directed attention to German linguistic studies (*Germanistik*), which Savigny actually sought to do.[60] In Germany, the call for a return to the pure and critically proven sources of Roman law and to their Latin language seemed incompatible with the doctrine of the *Volksgeist*. Such objections have often been raised by critics. Today, the most prominent legal historians — Romanists and Germanists alike — maintain that both Savigny and his Historical School were "basically unhistorical," and that this is as true of their methods as of their objective.[61]

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59. [Tr.] Cf. Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, edited by Guenther Roth and Claus Wittich (Berkeley, Los Angeles and London: University of California Press, 1978), Vol. 2, p. 867 (translation altered).

60. "The most important fact is and remains the history of Roman and canon law, which is the basis of our own. But we must acknowledge that, in scientific terms, Germanic law transcends German law; it comprises the law of all Germanic nations." See Savigny, "Stimmen für und wider neue Gesetzbücher," *Zeitschrift für geschichtliche Rechtswissenschaft*. Together with Savigny, Friedrich Eichhorn and Jacob Grimm were also important founders of the "Historical School." See the standard portrayal by Claudius Freiherr von Schwerin, *Grundzüge der deutschen Rechtsgeschichte* (Munich and Leipzig: Duncker & Humblot, 1934); fifth edition (Berlin: Duncker & Humblot, 1950), p. 255.

61. Cf. Koschaker, *Die Krise des Römischen Rechts*, and Schwerin, "Schuldenken und Gesetzeskunst," in *Deutsche Rechtswissenschaft*. Of particular interest here is the sharp critique by Beyerle ("Schuldenken und Gesetzeskunst," *Zeitschrift für die gesamte Staatswissenschaft*), which makes Savigny responsible for the fact that the 19th century German legislator lost the language of the people and spoke a scholastic language. However, Beyerle did not take note of the fact that a modern state law cannot be a "mirror" in the sense of medieval law books. Savigny was no doubt a master of the

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All these contradictions, which today come to mind in connection with Savigny's 1814 treatise, should neither be disavowed nor discounted. Clearly, it cannot be claimed that any overpowering content of his reasoning explains his overpowering success. The secret of Savingy's great external and internal impact lies in something else. His manifesto was the first deliberate distancing from the world of enactments. Its significance lies not in a type of argumentation but in an intellectual situation in which his main contention — his doctrine of the unconscious development of law — first gained historical significance, because it made jurisprudence the counterpole of mere positive legislation without abandoning law to the civil war slogans of natural law.

Thus Savigny's political failure after 1840 should not be seen as a refutation of his significance — as is often claimed. This failure, indeed a real fall, occurred when he left the firm ground on which he had become great and famous and entered a world which seemed to promise greater opportunities. He believed he should not go against the well-intentioned recommendations of his king, Frederick William IV. In 1842 he was appointed minister in charge of revising the law, and in October 1847, president of the Prussian State Council and State Ministry. Savigny's liberal enemies celebrated his misfortune with mockery and derision. Their triumph would have been even more vociferous had they been aware of the entire legislative activity of a man whose previous superiority consisted in denying his age's legislative competence and in referring it instead to jurisprudence. We know today that Savigny, shortly before the outbreak of the 1848 Revolution, hastened to simplify and accelerate legislation, even at the expense of the authority of the State Council, whose president he was.[62]

This was no doubt an unfortunate role, but one should not only look at it biographically. Through the benevolence of his king, Savigny became an ill-starred historical figure in the same way as Schelling, who in 1841 was summoned from Munich to Berlin. Schelling's Berlin lecture in the winter of 1841-42 (whose epochal significance as a symptom of

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German language. Also in my view, the problem of what language and scientific terminology the modern legislator should use is not yet solved in Beyerle's article (he expressly permits scientific and technical terms for decrees and directives on p. 210).

62. Hans Schneider uttered the following remark with respect to the simplification of the deliberations of the Prussian Privy Council: "Savigny on his own initiative created no other law of such significance in less time and with so little effort." See Schneider, *Der Preussische Staatsrat 1817-1918*. On Savigny's activities as minister of justice, see Adolf Friedrich Stölzel, *Brandenburg-Preussens Rechtsverwaltung und Rechtsverfassung dargestellt im Wirken seiner Landesfürsten und obersten Justizbeamten* (Berlin: F. Vahlen, 1888), Vol. 2, pp 535ff.

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decline was immediately recognized by Kierkegaard, Burckhardt, Engels, Bauer, Bakunin and Stirner) marked the beginning of the intellectual catastrophe of a generation and even a whole age of German idealist philosophy and theology. It was no accident that the misfortune of a generation and of an age of German jurisprudence began with Savigny's legislative activity, and that his *System of the Modern Roman Law* was readily torn apart by the young Lorenz von Stein[63] in line with the utter ruthlessness of a new generation.[64] This was not simply the fate of one man and his private contradictions but a total historical and intellectual catastrophe in which the fate of a great German jurist paralleled that of a great German philosopher. It was a moment in the collapse of the old order and the emergence of new forces leading directly to 1848. Savigny's 1814 manifesto belonged to a totally different intellectual and historical moment. As jurists, we should not forget that in 1849, when the eighth volume of his *System of the Modern Roman Law* appeared,[65] dealing with the foundations of modern international private law, Savigny was again himself and had regained his European significance. This work made a greater contribution to the unbroken and creative power of jurisprudence than all the legal codifications of the following age.

Succeeding generations of positivists in the 19th and 20th centuries could not properly understand Savigny's appeal to jurisprudence, not even as a historical phenomenon. They were no longer in a position to distance themselves from the world of mere enactments; they were not even in a position to understand their own time. Secure in their positivism, they did not consider the possibility of existential crises resulting from the split of law into legality and legitimacy. They became unsettled only when enactment, which they had taken uncritically to be the firm basis of positive law, suddenly began to accelerate, and their dogma: "A law is a law" became as problematic as the aphorism: "A mark is a mark."[66]

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63. [Tr.] Lorenz von Stein (1815-1890), along with Robert von Mohl, was the founder of the science of public administration. He was also one of the leading figures in the development of public finance in Germany. Although he began as a jurist, his significance rests on his social theories and his influence on German sociology.

64. Cf. *Deutsche Jahrbücher für Wissenschaft und Kunst*, successor of the *Hallischen Jahrbücher*, No. 92 (1941), pp. 365f.: "The concept of the state demands a law of its own"; "The whole system of pandect law is based on a completely different interpretation of the principal concepts of private law than our own."

65. [Tr.] Translated into English with Notes by William Guthrie under the title: *Private International Law and the Retrospective Operation of Statutes*, second revised edition (Edinburgh: T.T. Clark, 1880).

66. [Tr.] Schmitt is here comparing runaway legislation to the runaway inflation in Germany in the early 1920s.

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But their positivist methods ruled out any real understanding of their situation. There were many reasons why Savigny's name was still mentioned with great reverence, his life still devotedly researched, and his achievement still highly praised. But a positivist age was no longer able to recognize the essential point: that in an extraordinary moment, and with genial insight, a representative of the European spirit had recognized that the transition to state legislation raised the danger of the mechanization and instrumentalization of law twenty years before this danger was discerned by the first analyst of the total crisis of Europe — the great French historian, Alexis de Tocqueville, in *Democracy in America* (1835) — and a hundred years before it became generally known in a grave crisis and the bad news was spread by famous authors like Weber and Spengler.

Savigny spoke of the childhood, youth and maturity of a given people. It was an indication of youth if science guided legal life and safeguarded sources. He made his jurisprudence independent of theology and philosophy, as well as of the mere craft of lawmaking. This is the meaning of his "historical" tendency, of his return to Roman law and the genuine sources. In this he went far beyond the temporal content of his account and far beyond the failure of his legislative activity to correctly discern the core of the historical plight of European jurisprudence.

Jurisprudence as the Last Refuge of Legal Consciousness

When we view the sweeping horizons of European jurisprudence over many centuries we can see that it has always been determined by two great oppositions: on the one side, to theology, metaphysics and philosophy; on the other, to mere technical craft. European jurisprudence developed as an independent science after the 12th century through its struggle with theology and in its separation from the theological faculties. Savigny defended jurisprudence against this side in that he recognized a danger to its inner autonomy in the philosophical natural law of the secularized theology of the 17th and 18th centuries as well as in Hegel's philosophy. At the same time, however, he opposed a positivism characterized by the mere passing of laws, by mere prescription, as a factor antithetical to jurisprudence; he recognized the danger of the legal positivism of Napoleonic codifications. To both he opposed the "positivism of the historical source" in order to rescue jurisprudence as much from mere philosophy as from "mere craft." Jurisprudence would cease to be an autonomous science with its own specific character if it surrendered of its own volition to theology and philosophy; it would be merged with other faculties, and the achievement of half a millennium

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would be lost. Jurisprudence would then no longer be "positive" in a historical sense — in the sense Savigny attributed to this multifaceted term. In succumbing to the mere legality of an enactment it would lose its dignity as a science and become not even a useful instrument of a technical enterprise that treats the world as the *tabula rasa* for schemes without spatial or legal boundaries. Then jurisprudence would not only have ceased to constitute a "faculty"; it would have lost its academic character. It would no longer belong to a university, providing this institution still had the meaning it acquired historically as a concrete order of European intellectual life.

European jurisprudence is the first-born child of the modern European spirit, of the "occidental rationalism" of the modern age. The modern natural sciences followed later. The first pioneers of this rationalism were the legists, who were great revolutionaries and shared the fate of all true revolutionaries. The "commentaries" to the *Corpus Juris* originated in a rebirth of Roman law in the cities of north and central Italy in the 12th and 13th centuries — in chaotic times which did not know the security ideal of the 19th century but which nevertheless made men aware of the absolute necessity of a jurisprudence based on scholarly sources. Through vehement struggles with church and theology in the 13th and 14th centuries, jurisprudence established itself as a "faculty" and maintained itself in the tumultuous circumstances of a feudal age at its close. The 16th century, which saw the blossoming of a humanistic jurisprudence, was also a time of bloody religious civil wars. Great jurists of this epoch became the victims of an intolerant fanaticism, whereby each side had its martyrs, such as Story[67] on the side of the old belief, Donellus[68]

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67. [Tr.] The English martyr, John Story (1510-1571), became a lecturer on civil law at Oxford in 1535. Having apparently disavowed his Roman Catholicism after the accession of Edward VI, he gained notoriety as a member of parliament through his opposition to the act of uniformity in 1548, for which he was imprisoned by the House of Commons. Released soon after, he went into exile, but returned to England in 1553. He was one of Queen Mary's most active agents in prosecuting heretics, and one of her proctors at the trial of Cranmer at Oxford in 1555. He returned to parliament under Queen Elizabeth, but was imprisoned shortly in 1560. In 1563 he was rearrested, but managed to escape to Flanders, where he became a pensioner of Philip II of Spain. Authorized by the Duke of Alva in 1570 to exclude certain classes of books from The Netherlands, he was decoyed to a ship at Antwerp and conveyed to Yarmouth, where he was tried for high treason. Executed at Tyburn on January 1, 1571, Story was beatified by papal decree in 1886.

68. [Tr.] Donellus, the French jurist Hugues Doneau (1527-1591), was a Calvinist obliged to seek refuge in Geneva after the massacre on St. Bartholomew's Eve (1572). The following year he became a professor at Heidelberg and, after teaching at Leyden from 1579 to 1588, taught at Altdorf in Germany until his death. Second only to the French jurist Jacques Cujas (1522-1590) in the galaxy of illustrious 16th century French scholars of civil law, Doneau was one of the outstanding representatives of the reaction of

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and Gentili on the side of the new. During the 16th century religious wars, on St. Bartholomew's Eve in 1572, Bodin,[69] a typical jurist of this age, escaped death only by a miracle. No one can say that the intellectual courage, which belongs to jurisprudence as well as to every other science, failed it in this terrible time of religious civil wars.

Since the 19th century the situation of European jurisprudence has been determined by the split of law into legality and legitimacy. The danger the spirit of European jurisprudence faces today comes no longer from theology and only occasionally from a philosophical metaphysics, but from an untrammeled technicism which uses state law as a tool. Now jurisprudence must take a stand against the other side. The scholarly jurist is no theologian and no philosopher, but he is also no mere instrument of arbitrary prescriptions and endless enactments. We must now withstand a subaltern instrumentalization, just as in other times we have had to resist dependence on theology. We remain a science and a jurisprudence against both sides. That is the reality of our intellectual and spiritual existence, which we should not allow to be diminished by methodological, psychological or general philosophical arguments, because we fulfill a task which no other human activity can fulfill. We cannot choose the changing rulers and regimes according to our own tastes, but in the changing situations we preserve the basis of a rational

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Renaissance humanism to the aims and methods of the Bartolists or commentators. The *mos italicus* of the Bartolists, fundamentally an analytical-exegetical method with a fixed and complicated mechanism, gave expression to medieval scholasticism and the medieval belief in tradition and authority. In opposition to the *mos italicus*, French civil law evolved a method known as the *mos gallicus*, which developed two distinct tendencies in the study of pure Roman law along humanistic lines. Cujas became the leading exponent of the tendency developed by Guillaume Budé and Andrea Alciati, who applied an exegesis based on philology and history to the texts of Roman law. The second tendency was basically a method of synthesis as opposed to exegesis. First applied to Roman legal sources by Connanus and Douaren, it was elaborated and perfected by Doneau. He restricted his attention to Roman private law, and all his early studies were preparatory to his celebrated *Commentarii juris civilis*, composed of 28 books. Epoch making in the history of modern efforts to systematize Roman law, the final books were compiled by Doneau's pupil and friend, Scipio Gentili (1563-1616). In France, Doneau's writings and particularly his *Commentarii juris civilis* helped prepare the way for the *Code civil*, which was founded on Romanist material as well as on French customary sources. His influence persisted and left its mark on the scholarship of later centuries in all countries where Roman law was studied.

69. [Tr.] Schmitt always credited Jean Bodin (1530-1596) with being the theoretician of sovereignty. Together with Thomas Hobbes, Bodin was for Schmitt a kindred spirit, one of the two great founders of public law from the age of the religious civil wars. Cf. Carl Schmitt, *Ex Captivitate Salus: Erfahrungen der Zeit 1945/47* (Cologne: Greven Verlag, 1950), pp. 63, 65 and 72.

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human existence that cannot do without legal principles such as: a recognition of the individual based on mutual respect even in a conflict situation; a sense for the logic and consistency of concepts and institutions; a sense for reciprocity and the minimum of an orderly procedure, due process, without which there can be no law.[70] That we defend this indestructible core of all law against all destructive enactments means that we maintain a dignity which today in Europe is more critical than at any other time and in any other part of the world.

The traditionalism of English law practiced by lawyers belonging to a legal estate was no longer able to respond innovatively to great new problems. The transformation of law into *state* legislation in the French style, and into a functional mode of *state* judiciary and administration, contained the danger of rigidity; and for Germany, the most highly industrialized country, the transformation involved the danger inherent in the spirit of mechanization, runaway technology and mass society. The result was the increasing motorization of the legislative machinery. The phrase "deadly legality" (*"légalité qui tue"*) refers to the dangers of this dissolution of law under the avalanche of ever more legislation. Thus there remains for us only the resort to jurisprudence as the last defender of the unintentional origin and development of law.

When Savigny raised his voice in 1814, European jurists were still fascinated by Napoleon's codification — above all by the *Code civil*. In the pomp of this circumstance, most did not bother with the plight of European jurisprudence at the time, in particular the deplorable role of law teachers and professors. The hypnosis of the Napoleonic codifications was even stronger than the military and political success of the new caesar and outlasted his military and political collapse. France was the land of state jurists and of the most modern codifications of law. Typical for France was the alleged or actual pronouncement of the

70. *Due process*, which is crucial in the practice of American law courts, exemplifies the European origin of constitutional thinking and governmental forms in the US. See Hermann von Mangoldt, *Die geistigen Grundlagen des amerikanischen Verfassungsrecht* (Essen: Gesetz und Recht Verlag, 1938), p. 13. In our terminology, it is an *institutional guarantee*, which is no guarantee of the *status quo*. Since the time of the Hurtado case [Hurtado v. California (1884)], the Supreme Court determined that "due process of law" means a minimum of form and procedure and not simply what is traditionally considered to be the old procedure of common law. See John R. Commons, *Legal Foundations of Capitalism* (New York: The Macmillan Co., 1924) [See the reprint of this classic of economic history, with a prefatory note by Joseph Dorfman (Clifton, NJ: A.M. Kelley, 1974).], p. 33; Rodney Loomer Mott, *Due Process of Law: A Historical and Analytical Treatise of the Principles Followed by the Courts in the Application of the Concept of the "Law of the Land"* (Indianapolis: Bobbs-Merrill Co., 1926), p. 246.

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French jurist Bugnet[71] who, two generations before our German positivists, offered his listeners the cheap wisdom that for him there was no civil law but only a civil code.[72] The ruling opinion at the time was that French legal development, with its positivist transformation of law into state legislation, stood at the forefront of the progress of civilization and mankind. Thus it was in France that the split of law into legality and legitimacy was first perceived.[73] Few, Tocqueville being one, recognized that this celebrated progress of civilization was in reality nothing but a progressive centralization, that the apparent progress of law served nothing other than this centralization, that it signified the expanding framework for ever new devices of a legal enterprise which in fact only made the revolution permanent and embraced it as the only legitimate force superior to legality.[74] At least for a moment, the shock of 1848 opened many eyes. It is no accident that the terrible phrase, "*légalité qui tue*," the notion of deadly legality from which governments and peoples die, arose in France, the land of the legists, and just before the outbreak of 1848.

Immediately following the revealing shock of 1848, however, a positivist reaction and resignation set in, and the later 19th century "progressed" ever more toward increasingly asserting the legality of a given *status quo* in defense of whatever measures were taken. This occurred not only in France, where the split between legality and legitimacy first appeared, but in all European countries, even in England. I need only mention

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71. [Tr.] John Joseph Bugnet (1794-1866). Cf. Robert Joseph Pothier, *Oeuvres de Pothier, annotées et mises un corrélation avec le Code civil et le législation actuelle par Bugnet*, second edition (Paris: Cosse et Marchal, 1861).

72. Cf. Julien Bonnecase, *L' ecole de l'exégèse en droit civil. Les traits distinctifs de sa doctrine et de ses méthodes d'après la profession de foi de ses plus illustres représentants*, second revised and augmented edition (Paris: Boccard, 1924), pp. 29 and 128.

73. Already in 1829 its significance was indicated by Lamennais.

74. A French jurist of European reputation, Hauriou, became a crown witness for us when he confirmed this connection in 1916, in the midst of WWI. His view helped us recognize even more clearly Savigny's foresight and extraordinary importance for European jurisprudence. Hauriou said: "The revolution of 1789 had no other goal than absolute access to the writing of legal statutes and the systematic destruction of customary institutions. It resulted in a state of permanent revolution because the mobility of the writing of laws did not provide for the stability of certain customary institutions, because the forces of change were stronger than the forces of stability. Social and political life in France was completely emptied of institutions and was only able to provisionally maintain itself by sudden jolts spurred by the heightened morality." (*Principes de droit public a l'usage des étudiants en license (3eme année) et en doctorat ès sciences politiques* (Paris: Société du Recuil Sirey, 1916). p. XI. If the great French jurist then, in 1916, hoped to find a means of redress in the distinction of routine legislation and constitutional law, European constitutional experiences since 1919 have certainly dashed this hope.

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the names of Bentham[75] and Austin,[76] but there are many examples and parallels to the articulation of the views of that French teacher of civil law [Bugnet] who turned away from law and retreated to the *securité* of the civil code and positivist normativism. For Germany, we have the crude example of Bergbohm's naive legal positivism.[77] But in Germany there were still strong intellectual reserves, through which the name of Savigny could become a symbol. We dare not forget the origin of this symbol; we do not want to relinquish the chance of its future relevance.

More than a century ago, when Savigny wrote and published his 1814 treatise, the danger of an empty, legalitarian technicism was not as great as it is today, in the age of motorized laws and motorized decrees. So much greater and more admirable was the intellectual power then required to recognize the danger so early and to keep one's distance from an age which began with the split between legality and legitimacy and ended with the total transformation of historical into revolutionary legitimacy.[78] Only with this in mind does the arcanum of Savigny's manifesto become apparent. Whoever sees it will not misinterpret our invocation of the names of Savigny and Bachofen. In an age in which

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75. [Tr.] Although Jeremy Bentham (1748-1832) is primarily known as a social philosopher, he was also a lawyer, and his most conspicuous success was in the reform of English law and judicial procedure.

76. [Tr.] The chief figure in English analytical jurisprudence, John Austin (1790-1859), systematized and completed — in English terms! — Hobbes' work. He insisted that laws, being commands, emanate from a determinate source, and that every duty implies a command. The keystone of his system is that every positive law is established by a sovereign person or body of persons with respect to members of an independent political society. He was less concerned with the historical origin of the principle of positive law than with its present authority.

77. Cf. Karl M. Bergbohm, *Jurisprudenz und Rechtsphilosophie: Kritische Abhandlungen* (Leipzig: Duncker & Humblot, 1892). [Tr.] Bergbohm (1849-1927) was a legal philosopher and international lawyer who became the arch champion of positivism in international law. He considered treaties and state law the only valid sources of international law and thus the only instrumentalities for its development. Although he opposed the doctrine of natural law, he recognized that jurisprudence needed a philosophical basis, which was the object of *Jurisprudenz und Rechtsphilosophie*. Only the first volume appeared, under the title, "Das Naturrecht der Gegenwart."

78. "Revolutionaries who are unable to combine illegal forms of struggle with *every* form of legal struggle are poor revolutionaries indeed." See V.I. Lenin, *"Left-Wing" Communism, An Infantile Disorder* (Peking: Foreign Languages Press, 1970), pp. 101-02. In this connection, see the philosophical presentation of Georg Lukács in "Legality and Illegality," in Lukács, *History and Class Consciousness: Studies in Marxist Dialectics*, translated by Rodney Livingstone (Cambridge MA: The MIT Press, 1971), pp. 256-71. Lukács' article is more relevant and significant today than most of the writings on the philosophy of law and natural law which have appeared since 1920 because he rightly posed the question in terms of the concepts "legality and legitimacy."

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legality has become a poisonous dagger, with which one party stabs the other in the back, jurisprudence becomes the last refuge of legal consciousness. In a time of the utmost trials, jurisprudence is protected against the danger of falling back into a mere historical enterprise, as happened in the century of security. Even under the terror of the means of destruction modern science has put in the hands of every ruler, a jurisprudence thrown back on its own resources will know how to find the secret crypt in which the seeds of its spirit will be protected against every persecutor. It is this confidence — not some program for excavations and editions — that we are drawing from Savigny's treatise, which becomes for us a document of the first step away from legal positivism. European jurisprudence need not die a common death with the myths of the law and of the legislator. Let us remember our history of persecution, for our strength lies in our willingness to suffer. Then the genius will not leave us, and even the confusion of tongues will prove to be better than the Babylonian unity.

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The Crisis of Fordism or the Crisis of Social-Democracy?

Simon Clarke

The disintegration of East European regimes is not an isolated phenomenon, for it is only the latest and most dramatic manifestation of a process which has been unfolding over the past two decades throughout the world. It has to be seen as an expression of the state's failure to achieve particular economic goals it set for itself. Thus the crisis of the interventionist state necessitates the construction of new political forms that can both articulate and legitimate alternative economic strategies.

Although it was the Right which rode the political wave of the 1980s, the New Left, during the 1960s and the 1970s, had articulated an equally powerful critique of the state. This critique, however, was not matched by any coherent alternative to the discredited economic strategies of social democracy and state socialism to match the Right's appeal to the panacea of the market and the lore of an idealized past. The Right's program of privatization responded to political pressures by attempting to dismantle or privatize those apparatuses which had been the immediate focus of political unrest. It secured its political base by the selective redistribution of income in favor of electorally strategic sectors and, above all, by engineering a military-Keynesian boom.

By the end of the 1980s it became clear that there had been no miracle, but only an old-fashioned credit boom. The 1987 crash revealed the precarious foundations of the mountain of debt on which the "economic miracle" had been built. Although a new wave of liberalization in Eastern Europe and the Third World throws out a lifeline to

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the Right and paves the way for future expansion, it is unlikely that it can provide a permanent solution to the crisis of the neo-liberal strategy.

Today, much of the Left looks back nostalgically to the golden years of social-democratic optimism. Accordingly, the 1950s and 1960s are seen as years of growing prosperity and social harmony, with the "Keynesian Welfare State" realizing the social-democratic vision of a society combining the economic dynamism of capitalism with the political values of socialism. Consequently, the "crisis of social democracy" is not seen as a failure of the vision, but only of its realization — a failure engendered by fundamental economic changes which have rendered a monolithic and bureaucratic socialism inappropriate to the new modes of organization. In the wake of the realization that growing economic, social and environmental crises show that the neo-liberal model of deregulation does not provide a viable solution, social democracy has set out to construct a new model of regulation to realize the old vision.

A range of new theories have emerged to articulate the strategic opportunities recent economic developments are supposedly opening up for social democracy.[1] Despite considerable theoretical and political differences, they are all based on a sociological critique of the liberal theory of the market. For all of them, further economic growth is only possible within a particular institutional regulatory framework able to reconcile growth with social harmony. None of these theorists explain *why* the competitive process does not work or how their proposed alternatives can replace it.

They agree that there is no *one* model of regulation, but a range of alternatives, each of which is more or less constrained by the conditions of the dominant forms of production. They also agree that the post-war boom and the social-democratic hegemony of the 1960s was founded in a form of production generally described as "Fordist." The crisis of social democracy of the 1970s was accordingly an expression of the breakdown in the Fordist modes of regulation as a result of the crisis of Fordist production. Finally, there is a growing consensus that the 1990s will see the forging of new modes of regulation, appropriate to new forms of production, which define both the constraints on, and

1. The most influential are French Regulation Theory, pioneered by Michel Aglietta and popularized by Alain Lipietz; Social Structures of Accumulation Theory, developed primarily by Tom Weisskopf, Samuel Bowles and David Gordon; and the theory of Flexible Specialization, developed above all by Michael Piore and Charles Sabel. For a critique of Aglietta's theory, see my "Overaccumulation, Class Struggle and the Regulation Approach," in *Capital and Class*, no. 36 (1988), pp. 59-92.

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the opportunities for, new political strategies. These new forms of production are not yet clear, and the precise modes of regulation appropriate to them have yet to be determined. But the contours of post-Fordism are already emerging.

Fordism is allegedly based on the mass production of homogeneous products, using the rigid technology of the assembly line with dedicated machines and standardized (Taylorist) work routines. Increased productivity is attained through economies of scale as well as the deskilling, intensification and homogenization of labor. This gives rise to the mass worker, organized in bureaucratic trade-unions which negotiate uniform wages that grow proportionately with productivity increases. Homogeneous consumption patterns reflect the homogenization of production and provide a market for standardized commodities, while rising wages provide growing demand to match the growing supply. The overall balance between supply and demand is achieved through Keynesian macroeconomic policies, while the overall balance between wages and profits is achieved through a collective bargaining supervised by the state. The education, training, socialization, etc. of the mass worker is organized through the mass institutions of a bureaucratic welfare state. Collectively, these institutions, which finally came together in the 1950s, define a virtuous circle of rising living standards and rising productivity, rising wages and rising profits, economic stability and social harmony.

The subsequent crisis of Fordism leads to economic, social and political fragmentation out of which a new "post-Fordist" regime is to arise. As Fordist production approaches its limits, new methods of production emerge. The saturation of mass markets leads to a growing differentiation of products, with a new emphasis on style and/or quality. More differentiated products require shorter runs, and thus smaller and more flexible production units. New technologies provide the means by which such flexible production can be profitably undertaken. Yet, these new forms of production have profound implications. More flexible production requires more flexible general purpose machines, and more highly skilled "polyvalent" workers to operate them. Greater skill and flexibility requires that workers have a higher degree of responsibility and autonomy. More flexible production also requires more flexible forms of production control, while more flexible production relations require the dismantling of corporate bureaucracies. The interests of a more highly differentiated labor force can no longer be effectively represented by monolithic and bureaucratic

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Fordist trade-unions and political parties. Decentralized bargaining is required to negotiate more complex and individualized payment systems, which reward skill and initiative. Differentiation of the mass worker leads to the emergence of new identities no longer occupationally defined but articulated in idiosyncratic consumption, in new life-styles and in new cultural forms reinforcing demand for more differentiated commodities. All of this erodes old political identities. The welfare, health, educational and training needs of a differentiated workforce can no longer be met by a standardized bureaucratic welfare state, but only by differentiated institutions able to respond flexibly to individual needs.

These developments are not inevitable. Although the post-Fordist model promises to create the conditions for economic prosperity and social harmony, while providing new opportunities for human fulfilment and democratic control, there is no guarantee that such a utopia can be achieved. The realization of the Fordist project took almost fifty years and had to overcome political opposition all along the way. Today social and political forces still attached to the old order inhibit the emergence of post-Fordism. Bureaucratized trade-unions are not willing to abandon their power and privileges, any more than are industrial managers and civil servants. Mass producers respond to competition by tinkering with their products, seeking to create the impression of differentiation through marketing and packaging rather than through new designs and flexible production. Thus post-Fordism does not depict an inevitable future, but defines a political project. Its ideological appeal lies in the fact that, lacking any significant social base, it rests its claims on its historical necessity.

New Utopias: Post-Fordism, Flexible Specialization and the Crisis of Fordism

The model of post-Fordism has as many versions as it has proponents.[2] None of these, however, can match the rigor of Aglietta's

2. The model has been most vigorously proposed by the monthly journal of the British Communist Party, *Marxism Today*, the main contributions being collected in Stuart Hall and Martin Jacques, eds., *New Times* (London: Lawrence and Wishart, 1989). The most coherent and ambitious version of the model is that proposed by Bob Jessop, who tries to theorize a coherent post-Fordist package of an "accumulation strategy," a "state strategy" and a "hegemonic project." See Bob Jessop et al, *Thatcherism: A Tale of Two Nations* (Cambridge: Polity Press, 1989); Bob Jassop, "Thatcherism: The British Road to Post-Fordism," *Essex Papers in Politics and Government* (Colchester: University of Essex, 1989); Bob Jessop, "Regulation Theory in Retrospect and Prospect," in *Economy and Society*, forthcoming.

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theory of the Fordist regime of "intensive accumulation," primarily because they have no comparable analysis of the value relations that the new "regime of accumulation" is called upon to regulate.[3] The model of post-Fordism merely concatenates a number of superficial observations of contemporary society, without even specifying the theoretical relation between the various elements of the supposed post-Fordist regime, let alone subjecting them to any critical examination.[4] The proponents of the model make a virtue out of its incoherence, on the grounds that post-Fordism is a vision of the future whose contours are not yet clear and can only be worked out through an extended period of crisis and restructuring of economic, social and political relations. The necessity of post-Fordism lies not in its own definable virtues, but in its implicit claim that there is no alternative for social democracy in the face of the supposedly terminal crisis of Fordism. Post-Fordism is not a reality, nor even a coherent vision of the future, but mainly an expression of hope that future capitalist development will be the salvation of social democracy.

While the model of post-Fordism is not sufficiently coherent to allow rational evaluation, the model of "flexible specialization," as a new form of production, appears more coherent in postulating a relation between new technologies, new patterns of demand, and new forms of social organization of production. This nexus defines the foundations of a new social-democratic project in reconciling the interests of capital in securing high rates of productivity with the interests of labor in combining fulfillment at work with rising levels of income. Yet this coherence evaporates as soon as the model is carefully examined. The model is supposed to establish not only the social desirability of the new methods of production, but their economic superiority remains to be shown.

The model of "flexible specialization" was originally developed by Sabel and Piore on the basis of the generalization of Sabel's research on the Italian region of Emilia-Romagna.[5] Its most ardent advocates have since become Paul Hirst and Jonathan Zeitlin.[6] Sabel's original

3. Cf. Jamie Gough, "Where's the Value in Post-Fordism?" in Nigel Gilbert and Roger Burrows eds., *Fordism and Flexibility* (London: Macmillan, forthcoming).

4. See Paul Hirst's criticism of post-Fordism from the standpoint of "flexible specialization" in "After Henry," in *New Times*, *op. cit.*

5. Charles Sabel, *Work and Politics* (Cambridge and New York: Cambridge University Press, 1982). Charles Sabel and Michael Piore, *The Second Industrial Divide* (New York: Basic Books, 1984).

6. See their edited volume, *Reversing Industrial Decline? Industrial Structure and Policies in Britain and her Competitors* (New York: St. Martins Press, 1989), and their papers "Flexible

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work made very modest claims, relating the new forms of high technology and cooperative artisan production to the very specific economic, social and political context in which they had been introduced. In particular, the privileges of the new artisans rested on a combination of a scarcity of skilled labor in a particularly dynamic branch of specialized production and the availability of a pool of unskilled low-wage workers. The profitability of the new methods of production was secured by very favorable market conditions and the intensification of the labor of a majority of low-paid workers. The implication was that both the generalizability and the social desirability of the model were questionable.[7] The same qualifications apply to the other examples put forward by the proponents of "flexible specialization," e.g., the flexible manufacturing systems, pioneered by Toyota in Japan, and the high technology sector in Baden-Württemberg in Germany.[8]

The coherence of the original model rested on the particularity of its circumstances, which explained the favorable conditions that made possible a degree of collaboration between enterprises and enabled a section of labor to enjoy socially and materially advantageous working relations. Yet the particularities of the model soon disappeared into the background. In his book with Mike Piore, Chuck Sabel generalized his model as the basis of a Proudhonist vision of a new future of small-scale cooperative artisanal production, while Hirst and Zeitlin have removed all constraints, breaking the link between "flexible specialization" and any particular technical or economic conditions in insisting that the model is universally applicable, since cooperative and trusting relations do not depend on small scale production, nor on any particular technology or market relation, but only on the presence of an appropriate set of

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Specialization and the Competitive Failure of UK Manufacturing," *Political Quarterly*, vol. 60, no. 3, pp. 164-78; and "Flexible Specialization vs. Post-Fordism: Theory, Evidence and Policy Implications," paper presented to the conference on "Pathways to Industrialization," Arrowhead Lake, California, March 1990.

7. On the "Third Italy," see also Fergus Murray, "The Decentralization of Production and the Decline of the Mass Collective Worker?" in *Capital and Class*, no. 19 (1983), pp. 74-99; Fergus Murray, "Flexible Specialization in the 'Third Italy'," in *Capital and Class*, no. 33, (1987), pp. 84-95; and Ash Amin, "The Flexible Small Firm in Italy: Myths and Realities," in Anna Pollert ed., *Farewell to Flexibility* (Oxford: Basil Blackwell, 1990).

8. On the limits of Toyotism, see Satoshi Kamata, *Japan in the Passing Lane* (New York: Pantheon, 1982); Knuth Dohse, Ulrich Jurgens and Thomas Malsch, "From 'Fordism' to 'Toyotism'? The Social Organization of the Labor Process in the Japanese Automobile Industry," in *Politics and Society*, vol. 14, no. 2 (1985) pp. 115-46. On the equivocal benefits of flexibility in German manufacturing, see Christel Lane, "Industrial Change in Europe: The Pursuit of Flexible Specialization in Britain and West Germany," in *Work, Employment and Society*, vol. 2, no. 10 (1988), pp. 141-68.

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norms and values.[9] This generalization has led to a surreptitious inversion of the original causal relations. While in the model it was favorable economic conditions which made possible the formation of harmonious working relations, at least among capitalists and a section of labor, the generalization of the model is based on the assumption that it is these harmonious working relations which are the condition for economic prosperity, although this supposition is neither made explicit nor subjected to critical scrutiny.

It is difficult to detect any coherence in the model of "flexible specialization," while its empirical applicability has also been widely challenged. Williams et al[10] provide a thorough critique of Sabel and Piore, showing that the model postulates no coherent relations between its different elements, while there is no empirical evidence for the claimed break-up of mass markets or for the alleged inability of mass production to respond to changing economic conditions, or for the claimed correlation between new technology and the scale and social forms of production. Pollert[11] has shown that in the British case "flexibility" has involved the intensification of labor. Fairbrother[12] has stressed the leading role of the state in promoting "flexibility" which, far from expressing the technological requirements of modern manufacturing, has been taken furthest in the public sector. Holloway[13] has similarly stressed the role of the state in restructuring class relations in the auto industry — not as the consequence of the introduction of new technology, but as its

9. Alain Lipietz has generalized the dualism of the original model to resurrect the long discredited theory of the "new international division of labor," arguing that it represents a division between national economies dominated by post-Fordist production relations supported by dynamic high-technology, high-skill, high-wage branches of production, and those dominated by neo-Fordist production relations in which competitive pressure is met by the intensification of labor and cutting of wages. See Alain Lipietz and Daniele Leborgne, "Fallacies and Open Issues about Post-Fordism," paper presented to the conference on "Pathways to Industrialization," Arrowhead Lake, California, March 1990. On the "new international division of labor," see Rhys Jenkins, "Divisions over the International Division of Labor," in *Capital and Class*, no. 22 (1984), pp. 28-57; David Gordon, "The Global Economy: New Edifice or Crumbling Foundations?" in *New Left Review*, no. 168 (1988), pp. 24-64; E. Schoenberger, "Multinational Corporations and the New International Division of Labor: a Critique," in Stephen Wood, ed., *The Transformation of Work* (London: Unwin Hyman, 1989).

10. Karel Williams, Tony Cutler, John Williams and Colin Haslam, "The End of Mass Production," in *Economy and Society*, vol. 16, no. 3 (1987), pp. 405-439.

11. Anna Pollert, "Dismantling Flexibility," in *Capital and Class*, no. 32 (1988), pp. 42-75.

12. Peter Fairbrother, *Flexibility at Work: The Challenge for Unions* (London: WEA, 1988).

13. John Holloway, "The Red Rose of Nissan," *Capital and Class*, no. 32 (1987), pp. 142-64.

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social and economic precondition. Elger[14] has reinforced this conclusion on the basis of a comprehensive survey of the evidence, which shows that there have been widespread changes in work organization, wage bargaining and payments systems, but that these changes reflect the growing strength of management and the weakening of labor, rather than having any determinate relation to technological change. These conclusions have been further reinforced by a wide range of recent research.[15] Far from being chastened by the array of arguments deployed against the model of flexible specialization, Hirst and Zeitlin draw strength from its apparent failures, in exactly the same way as do the proponents of post-Fordism. They recognize that even their chosen examples are not only imperfect realizations of their ideal, and acknowledge that flexibility and automation have more generally been introduced as the means of deskilling, disorganizing and intensifying labor. They insist, however, that this is not a failure of the model but of short-sighted capitalists, managers, workers, trade-unionists and politicians, who are still locked in the outdated vision of the Fordist model.

Hirst's and Zeitlin's claim that the theory of flexible specialization does not propose any necessary relations between the various elements of the model is disingenuous, since they do not present the model merely as a utopian vision but as a theory defining new institutional forms of social relations of production which promise to provide the economic basis for growing prosperity and social harmony. The failure of capitalists and the state to develop this new institutional framework explains not only the persistence of social conflict but, more importantly, the competitive failures of British and US manufacturing industry. This analysis seems to lead directly to neo-liberal conclusions: Fordism has been sustained beyond its time by government subsidies and protection, by feather-bedding, by trade-union intransigence, and by managerial lethargy. In the face of such obstacles, only a stiff dose of competition will create the conditions in which the new forms of production can prevail. Hirst and Zeitlin, however, use their analysis as the basis of a critique of neo-liberalism, on the grounds of a supposed antithesis between

14. Tony Elger, "Not the Polyvalent Worker: the Restructuring of Work Relations and Flexible Intensification in British Manufacturing," in Hew Beynon, ed., *The Changing Structure of Work* (London: Anglo-German Foundation, forthcoming), and "Technical Innovation and Work Reorganization in British Manufacturing in the 1980s," in *Work, Employment and Society*, vol. 4, Special Issue (May 1990), pp. 67-101.

15. See Richard Hyman and Wolfgang Streek, eds, *New Technology and Industrial Relations* (Oxford: Basil Blackwell, 1988); Richard Hyman, *The Political Economy of Industrial Relations* (London: Macmillan, 1989); Anna Pollert, ed., *op. cit.*; John Tomaney, "The Reality of Workplace Flexibility," forthcoming in *Capital and Class*, no. 41 (1990).

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contract and competition (espoused by neo-liberalism), and trust and cooperation (the values of flexible specialization).

Although cooperative and trusting relations are supposed to be the key to rising profits and growing prosperity, the survival of flexibly specialized enterprises is constantly threatened by competition, in both product and financial markets, from Fordist enterprises. Thus, far from espousing a neo-liberal solution, Hirst and Zeitlin offer a political program built around an industrial strategy which would provide extensive state protection and subsidization of their favored forms of production — a program that retains the worst elements of the old industrial strategy of social democracy in providing indiscriminate subsidies to capitalist enterprises, while abandoning any commitment to the social-democratic principles of central coordination and political accountability. But there is a paradox at the heart of their argument. If flexible specialization is the key to restoring productivity and profitability in the wake of the crisis of outmoded Fordist methods of production, it is difficult to see why it should not be able to withstand competition from Fordist enterprises. Similarly, if cooperative relations are more profitable than competitive ones, it is difficult to see why it is necessary for such relations to be imposed on capitalists, rather than leaving their development to capitalists' self-interest, whether through horizontal and vertical integration, mutual shareholding, partnership agreements, or long-term contracts. But maybe it is the capitalists who are right in holding onto Fordism, and Hirst and Zeitlin who are wrong in believing that love, trust and harmony are the key to profitability.

Hirst's and Zeitlin's argument has nothing to do with Fordism. It is essentially a Christian-Democratic critique of both social democracy and neo-liberalism. Their main economic argument is that neo-liberal strategies make no allowance for externalities (which may be true in practice, but not in theory), so that some collective framework is required to make appropriate investments in training, research and infrastructure. But social-democratic statism politicizes such investment decisions, instead of subordinating them to the competitive needs of local or national capitalists. The most appropriate basis on which to build an economic strategy is therefore neither competitive economic relations nor statist political forms but a set of common solidaristic values, which Hirst recognizes to be the "small town virtues, old-style familialism and deeply conservative social attitudes" characteristic of Christian Democracy.[16] These values are expressed in informal local networks, typical of Emilia-Romagna and

16. Hirst, "After Henry." *op. cit.*, p. 325.

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Baden-Württemberg, in which capitalists, politicians, civil servants, and trades union bureaucrats enjoy trusting and cooperative relations. This could be called the Masonic Road to Socialism. Those who choose Japan as their model have a similar diagnosis, but a rather different solution, tending to emphasize the competitive power of national corporate capital rather than local enterprise, and stressing the "structured flexibility" provided by the suppression of competition in labor, products and financial markets.[17] This could be called the Industrial or Feudal Road to Socialism.

Even its staunchest advocates have been able to discover only a few isolated examples of the new system of production, to say nothing of the new modes of regulation it supposedly requires, and they recognize that even these cases are but an imperfect realization of their system. Post-Fordism is not a reality, but a promise. None of the various proponents of post-Fordism provide any coherent argument to justify the harmonious relation between the economic, social and political institutions they propose. Thus the promise of post-Fordism derives entirely from the claim that it can overcome the limits of a Fordism supposedly doomed by its "inflexibility." But this claim rests on the adequacy of the characterization of Fordism they employ.

A careful examination of the Fordist technological revolution shows that it marked the culmination of the penetration of capital into production, which means that Fordism is synonymous with capitalist production *as such*. Similarly, Ford's own application of the principles of capitalist production was inflexible. This inflexibility was not inherent in the system and was abandoned by the end of the 1920s. Consequently, there is no reason to believe that Fordist production is inherently inflexible. On the contrary, the principles of Fordism have proved applicable in an extraordinarily wide range of technical contexts.

Fordist technology made a new range of products available to a mass market. Thus Fordism, particularly in the auto industry, precipitated a revolution in consumption. According to the theory of "flexible specialization," the inflexibility of Fordist technology and the conformist tastes of the homogenized worker determined the undifferentiated character of this mass consumption as an essential moment of Fordism. On the contrary, however, the Fordist revolution in consumption had the opposite effect in that the flexibility of motor transport broke through the rigidity of the railway age.

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17. See Martin Kenney and Richard Florida, "Beyond Mass Production: Production and the Labor Process in Japan," in *Politics and Society*, vol. 16, no. 1 (1988), pp. 121-58.

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Fordism was not just a new technology. The introduction of the technology required new forms of the social organization of the production process, which hinged on the question of control. This organization, however, is not determined by technological imperatives but by profitability requirements. The inflexibility of particular forms of organization is not the result of technology, but of the workers' resistance to employers' demands both individually and through trade-unions. Fordist constraints are not an expression of technological inflexibility, but of any method of production which requires the forging of a "collective worker." Thus the forms of organization of the labor process are determined through a permanent struggle over the social organization and control of the collective worker. This struggle for control is a permanent feature which can never be finally resolved, for it rests on a fundamental conflict between labor needs and capitalist imperatives. Every resolution of the conflict is therefore only the basis for its renewal. In this sense, the social organization of production cannot be explained as an expression of a particular technology, but only as a phase of the ongoing struggle.

More broadly, as labor organizations make political demands, their intransigence threatens the stability of the state and the reproduction of society as a whole. While capitalists and politicians may recognize that labor has distinct interests, they also insist that labor's interests must be subordinated to the need to secure capital's expanded reproduction and the state's stability. Labor's refusal to accept this subordination thus appears as the irrational expression of its immaturity. It is this perception which underlies the broader project of Fordism, whose objective is not simply to create a new form of labor organization but to create a new form of society, built on institutions through which conflicts of interest can be rationally resolved, and a New Man with the moral and intellectual qualities required by this new society.

This Fordist sociological project is not a static one, but must develop as it confronts obstacles to its resolution. This means that there cannot be *one* Fordist project, but a range of them, some of which may prove temporarily more successful than others, but none of which can ever be fully realized. The following will indicate how the Fordism of the 1960s was no more successful in securing prosperity and harmony than had been any of its previous versions. Its crisis did not mean the death of Fordism any more than that of its previous prototypes.

The Fordist Technological Revolution

The obligatory starting point here is the technical revolution Henry

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Ford carried out at the Ford Motor Company. The story is well known.[18] There was nothing original in either the detail or the general principles which Ford applied to automobile production. The decomposition of tasks, the specialization of tools, the assembly of tools into the machine, and even of machines into the machine system, were all typical of the transformation of craft production into large-scale industrial production — a process which had already proceeded further in the US than anywhere else, spurred on particularly by the scarcity and organized strength of skilled workers.[19] The originality of Ford's project was that he applied these principles to a new branch of production, and he applied them with such a single-minded ruthlessness that he transformed the conditions of automobile production almost overnight.

Although Ford's achievement is popularly attributed to his introduction of the assembly line, this was only a small part of the revolution. The introduction of the assembly line presupposed the mass production of standardized and interchangeable parts to a very high tolerance attainable only by deploying specialized machinery allowing both the deskilling of skilled work and the rigorous separation of production from assembly. Once this had been achieved, the development of the assembly line was almost a formality. The most complex line, that of chassis assembly, took only six months to develop. Although this led to an immediate sixfold cut in the labor-time required to assemble the chassis, it only represented a saving of 10 hours, or about $2.00 in wage costs, for an automobile selling for around $500.

The fragmentation of tasks meant that production bottle-necks were immediately identified, providing well-defined technological and/or organizational problems for Ford's engineers to tackle. It also meant that technological changes could be introduced discretely, replacing individual tools or altering the organization of particular shops, without having to transform the system as a whole. In this sense, the Fordist fragmentation of tasks and standardization of components introduced a new *flexibility* which paved the way for technological dynamism.

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18. Huw Beynon, *Working for Ford* (London: Harmondsworth, 1973), Chapter One gives a concise version of the story. Stephen Meyer III, *The Five Dollar Day* (Albany: SUNY Press, 1981) is very useful. Henry Ford, *My Life and Work* (Garden City, NY: Doubleday, 1922) is the sacred text.

19. The general principles were first systematically expounded by Marx in his discussion of "Machinery and Modern Industry" in *Capital*, vol. I. In this sense, Fordism is "a shorthand term for the organizational and technological principles characteristic of the modern large-scale factory." Charles Sabel, *Work and Politics* (Cambridge: Cambridge University Press, 1983), p. 33.

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In a nutshell, Fordism broke down what had been an extremely rigid technology and an equally rigid organization of production into its component parts in order to reassemble it according to the principles of its own rationality. While there is no inherent virtue in "flexibility" for its own sake, and established methods may become a barrier to further development, the constant technological dynamism inherent in Fordism implies a maximum of adaptability of production methods. Moreover, while Fordism deskilled large parts of direct-production labor, it also created a need for new skills. To keep the line moving Ford needed a stratum of workers with "polyvalent" skills to fill gaps in the line, overcome bottle-necks and maintain machinery. At the same time, the dynamism of Fordism, necessary to maintain a plant's competitive edge, implied the constant development of new tools, dies and machines which could only be developed by highly skilled workers, using flexible and general purpose machines.[20]

Ford's project was associated with a number of other features probably essential for its realization, which introduced obstacles to the further development of Fordism. In particular, Ford saw the vertical integration of production and the standardization of products as essential elements of his revolution. Vertical integration was necessary because of the need to apply Fordist principles to the production of all components. However, once these principles had been adopted, vertical integration became an obstacle to their further development because independent suppliers could achieve further economies of scale by supplying identical components to a number of manufacturers.[21]

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20. On the flexibility of Fordism, see Karel Williams, Tony Cutler, John Williams and Colin Haslam, "The End of Mass Production," in *Economy and Society*, vol. 16, no. 3 (1987), pp. 405-39.

21. The OEEC report on the development of the European motor industry after WWII warned against vertical integration on these grounds. The report is a fascinating prefiguration of post-Fordism, emphasizing the decentralization, multi-sourcing, subcontracting of the US auto industry, and the centrality of the standardization of parts to the ability of the industry to reconcile high productivity with a wide model range. Chrysler was typical in subcontracting with 10,000 suppliers of auto parts in 42 states, 75% of whom employed fewer than 100 workers. See OEEC, *Some Aspects of the Motor Vehicle Industry in the US* (Paris: OEEC, 1952). The issue of vertical integration, as opposed to sub-contracting or purely market relations, is a complex one, involving a range of advantages and disadvantages associated not only with technological constraints but also with legal, financial, commercial and competitive considerations as well as considerations of labor control. Fordism requires the central coordination of production and the integration of the parts into the whole. But in particular circumstances this subordination may be achieved as well, or as badly, through the anonymous processes of the market as by centralized bureaucratic regulation or cooperative networks.

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Similarly, product standardization was probably necessary at first to provide long enough runs to carry through the rationalization of production and the standardization of components. But once this was achieved, product standardization became an obstacle to the further development of the technology of the factory because it limited the scope for reaping further economies of scale by expanding the model range. The massive growth in production of the Model T, and the equally rapid growth of a second-hand market, meant that the automobile market soon approached saturation. On the other hand, the market for more sophisticated automobiles remained too restricted to support Fordist production methods. Ford's failure to fully appreciate that the key to his revolution lay in the standardization of components, not the standardization of the product, left open the gap which General Motors immediately filled by diversifying its model range. In this sense, "Sloanism" cannot be contraposed to Fordism since it is only the development of Fordist principles, removing barriers erected by Ford's limited vision. It was the application of the principle of using standard components for the production of a range of models, and even as parts of quite different commodities, that permitted the rapid spread of Fordist production methods.

If Fordism is to be identified narrowly either with Ford's technical and organizational achievements or with his production philosophy, then Fordism has to be seen as having failed by the 1930s, to be replaced by more flexible forms of production, which alone made the spread of Fordist principles possible. However, these features are so clearly peripheral to the revolutionary significance of Ford's project that it makes much more sense to discard them, and to identify Fordism more broadly with the decomposition and recomposition of the production process as the basis for the generalization of industrial production methods and the internalization of the sources of technological dynamism.

The Fordist Revolution in Consumption

Fordism involved not only a revolution in technology, but also in consumption. Ford's project depended on his vision of the automobile as the basic means of transport. This revolution was by no means associated with a narrowing of choice, with the suppression of differences, or with the homogenization of either products or consumers. Before the Model T, one could buy any mode of personal transport as long as it was a horse. Ford offered a more limited range of colors than could be provided by horse-breeders, but there was more scope for bolt-on additions

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than the simple horse-brass. With the generalization of Fordist production methods, other manufacturers soon moved into the mass market, offering middle-class consumers a range of choice that had hitherto been available only to the ultra-rich. Moreover the standardization of components and technological improvements extended the benefits of Fordism both in terms of price and reliability to specialized producers. Although hitherto every horse, cart and carriage had been unique, their physiological, technological and economic constraints meant that there had in fact been a very limited range of models available.

The rapid reduction in the cost of production of automobiles transformed them from a luxury toy into a new mode of mass transport, which restored the flexibility and individuality of personal mobility threatened by the railway age, although the need for cambered roads meant that the car could never match the flexibility of the horse. The motor-bus cut costs and increased the capacity of local public transport. The impact of the development of commercial road transport was at least as significant as the development of the private automobile.

The growth of the railways had been an enormously powerful lever for the concentration of capital, also in industries as varied as banking and finance, steel and coal, commodity dealing and wholesale and retail trade. This was not only a result of the concentration of railway capital, but also because of the rigidity of the railway system, which had opened the mass market but narrowed the channels of access to that market. The concentration of capital in a whole range of consumer goods industries had led to competition based on the differentiation of homogeneous products and on the industrial processing of raw materials to provide a rapidly widening range of consumer goods. At the same time, however, the rigidity of railway transport confined such opportunities to the largest corporations, while restricting the distribution of their products. The development of road transport overcame these barriers, both extending the distribution of the new range of goods and providing smaller producers with access to new mass markets.

The revolution in production and consumption inaugurated by the railway age had been essentially urban, which largely passed those communities with no railway station. The growth of motor transport extended the revolution to the countryside, integrating the most remote hamlet into the market framework and laying the foundations for the revolution in mass communications provided by the development of radio and then TV. Finally, the Fordist generalization made possible an enormous diversification of mass consumption, as the

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standardization of components made it possible to assemble an almost infinite variety of products without losing the benefits of mass production. In all these respects the "revolution in consumption" acclaimed by post-Fordism is, directly or indirectly, not a reaction against Fordism but only a further development of it.

The Fordist Transformation of the Labor Process

Fordism involved not only a revolution in technology and consumption, but also one in the social relations of production. First, the rigorous decomposition of tasks, including the sharp separation of skilled and unskilled tasks, permitted the rigorous differentiation of the labor force, which reinforced the existence of a "dual labor market" composed of a small stratum of skilled workers and a mass of unskilled immigrant workers. Second, the transition from craft to industrial production threatened to reduce the worker to a cog in the industrial machine. The industrial labor force no longer comprised a more or less coordinated mass of discrete individual workers and work-groups, each of which was under the direction of a skilled or supervisory worker. Fordism sought to fuse the labor force into an organic whole, a genuinely collective laborer, in which the productive contribution of each individual and group was dependent on the contribution of every other. The distinction between these two aspects of the development of industrial production is essentially the distinction between Taylorism and Fordism. Taylorism decomposes tasks and assigns them to individual workers, while Fordism recomposes the tasks by welding individual workers into a human machine.[22]

The flexibility and autonomy supposedly characteristic of skilled craft workers are definitely obstacles to the Fordist socialization of production, whose full development depends on workers performing their allotted task, however skilled or unskilled they might be, in the allotted place, at the allotted time. For this reason, craft workers tend to resist the Fordizing of production, the destruction of craft unions being a pre-condition for the full deployment of Fordist principles. This, however, is not a technology-imposed requirement, but the capitalist subordination of technology and the associated social organization of labor to minimize labor-time and accelerate capital turnover. Thus the extent to which workers' autonomy was subordinated to the human

22. Christian Palloix, "Le proces de travail. Du fordisme au neofordisme," in *La Pensée* 185 (February 1976). Translation in the CSE/Stage One pamphlet, *The Labor Process and Class Strategies* (1976).

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machine was determined not by technology but by a persistent struggle, which in turn constrained the particular ways in which Fordist principles were institutionalized at different times and places.

In the US, employers had been able to exploit the mass influx of immigrant workers and the sharp sectional and racist divisions within the trade-union movement to destroy craft unions and, temporarily, to control production unchallenged. In Europe, employers did not enjoy such favorable circumstances. Although they had defeated syndicalism by the mid-1920s, they still had to take into account skilled workers, and to organize production in such a way as to reproduce and reinforce inherited divisions within labor.[23] This, in turn, reproduced the differences in the skill composition of labor and the institutional forms of industrial relations which distinguished Europe (and Japan) from the US. That Fordist principles could nevertheless be generalized is testimony once again to their flexibility.

The full "Americanization" of industry could only have been achieved by contraposing shop-floor power to "management's right to manage" — a right skilled workers had never recognized. This was the primary consideration which, up to the 1950s, underlay the resistance of European capitalists, as well as workers, to the "Americanization" of European industry. To the extent that Fordist production methods were established outside the US before 1939, they were largely adapted to local conditions, whether the militarization of labor in Japan and in the labor camps of the Third Reich, the fascist corporatism of Germany and Italy, the workerist productivism of the Soviet Union, or the more fragmented industrial relations of Britain. While new technology could be profitably introduced on the basis of negotiation within the existing framework, there was no incentive to change. In Germany, Italy and Japan even the destruction of trade-unions by fascism, war and occupation did not completely clear the ground for Fordism. In Britain, it was not until the 1970s that employers sought to restructure skills and shop-floor trade-union organization — a restructuring which was thoroughly Fordist, although facilitated by new forms of technology.

It is a commonplace that the development of new technology and the social organization of production are moulded by the wider context in

23. Thus, despite efforts to prevent the development of shop-floor trade-unionism, Ford's own attempt to export his methods to Europe was not completely successful. Cf. Beynon, *op. cit.*; Ferruccio Gambino, *Workers' Struggles and the Development of Ford in Britain* (London: Red Notes, n.d.).

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which they take place. In this sense, Fordism is a project which can never be completely realized. The other side of this commonplace is that the technology has to be sufficiently flexible to accommodate human imperfections and resistance. Neither tasks nor workers can ever be perfectly standardized, so that a degree of flexibility has to be built into the industrial system to ensure that normal variations in the work-pace can be absorbed without bringing the whole system to a grinding halt. This may involve the holding of buffer stocks, reduction in the speed of the production line, provision of a body of relief workers, permitting workers to move up or down the line, etc. This, in turn, implies that the workers' willingness and ability to perform their allotted tasks cannot be simply imposed by technology, for the flexibility which has to be built in to allow for individual variations and interruptions can easily be exploited by workers, individually and collectively, to re-create a degree of autonomy and to relieve the burden of work.[24] On the other hand, if the system is simply adjusted to the workers' needs, the system's benefits for capital will be progressively eroded. Thus, far from providing a technological solution to the problem of regulation of labor, the industrial system exacerbates the problem of labor control. This problem was by no means new. It has been capital's dilemma since it first sought to control production. Without control of the labor force, new technology, no matter how productive, is useless to the capitalist. Thus the resolution of the problem of labor control was a condition for the profitable introduction of Fordist technology.[25]

The Fordist Regulation of Labor: the Five Dollar Day

The problem of labor control appeared in a number of different forms in Ford's own plants: interruptions in production, deterioration

24. Thus Aglietta is wrong to claim that "workers are unable to put up any individual resistance to the imposition of the output norm, since job autonomy has been totally abolished." See his *Theory of Capitalist Regulation* (London: New Left Books, 1979), pp. 118-19.

25. The traditional method of controlling labor in craft production was through the payment of piece-rates, with supervision achieved through skilled workers on the basis of internal sub-contracting and the gang or helper systems. Taylorism involved the rigorous individualization of the piece-rate as the means of monitoring and regulating every worker's effort (although Taylor himself was opposed to piece rates). However, such a method of payment was inappropriate to the new collective forms of labor organization in which individual productive contributions were subsumed under the whole. On the other hand, the technology could not in itself serve to impose a collective discipline on workers. Thus labor control could only be based on a combination of the technical subordination of labor to the machine, enforced by external supervision and reinforced by new methods of encouraging the worker's subjective motivation.

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in quality, absenteeism, sickness, labor turnover, and the growth of trade-union activity. All these problems threatened to undermine Ford's technical achievements. The first attempt to combat these problems, in late 1913, involved the creation of a new "skill-wages" ladder to reimpose a hierarchical structure on labor and to provide incentives, and a Savings and Loan Association to combat insecurity. But this had little impact. In 1914, Ford introduced a much more radical scheme that used higher wages and pervasive supervision in an extremely ambitious exercise in social engineering, the "Five Dollar Day," which cut working hours and promised over twice as much pay (in the guise of "profit sharing") for those who conformed to Ford's standards.

The Five Dollar Day involved a more radical restructuring of job categories. More importantly, however, it was used to set standards of morality and behavior both on and off the job. Only mature workers with six months service, whose moral and personal habits passed stringent tests, were eligible for the bonus. To enable them to pass these tests, Ford set up churches and established a welfare and education program to provide moral guidance, to teach English, to inculcate American values and to advocate the American Way of Life. Workers who failed the tests were allowed a period of probation before dismissal. The Sociological Department was set up to develop, monitor and enforce the scheme. Needless to say, in Ford's individualistic and family-centred vision there was no place for the mass worker, trade-unions, full employment or the welfare state.[26]

The initial impact of the new scheme was dramatic. Absenteeism fell from 10% to less than .5%. Labor turnover fell from nearly 400% to less than 15%. Productivity rose so dramatically that, despite the doubling of wages and the shortening of the work-day production, costs fell. However, Ford could not afford to pay these wages for long. While inflation eroded the wage gains, the market for his automobile remained limited, despite a continuous fall in price, and Ford faced growing competition from those who had followed not only his lead but had taken his revolution further. General Motors offered a greater range of products, while the growing second-hand market undercut

26. For details of the project, see Meyer, *op. cit.* In Europe in the 1920s Fordism was seen, for good or ill, as a central component of "Americanism." For sharply divergent evaluations of Ford's vision of the "New Man," compare Antonio Gramsci, "Americanism and Fordism," in his *Prison Notebooks* (London: Lawrence and Wishart, 1971), with Aldous Huxley, *Brave New World* (Harmondsworth: Penguin, 1955).

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the Model T. Nevertheless, it was Ford, not Fordism, who was too inflexible to respond to these changes. Ford remained convinced of the wisdom of his ways and sought to meet growing competition by cutting costs further. But technological improvements alone could not cut costs sufficiently to restore Ford's fortunes. The only alternative was wage cuts and the intensification of the work-pace, enforced not by high pay but by a ruthless discipline imposed by the re-named "Service Department," with its private police force and its network of spies inside and outside the plant.

Ford's increasingly repressive methods were not dictated by technology, nor by economic conditions. Other producers had been developing alternative and more economic systems of labor control in the face of growing workers' resistance. Ford's attempt to create a New Man fit for his New Age bred only hostility and resentment, while incurring escalating costs of supervision and enforcement. While high unemployment enabled Ford to recruit labor throughout the 1930s, and he was able to use his wealth and power to keep trade-unions out, other employers were recognizing unions and realizing that new forms of industrial relations, built around collective bargaining, could reconcile labor control with industrial peace by trading acceptance of managerial prerogatives for better wages and working conditions. The development of more complex job classification and payment systems, including bonuses, incentives and piecework payments, fragmented the labor force, while providing a means by which individual workers could be subordinated to the discipline of their colleagues, thus reducing supervision costs. Such payment systems accorded the work-force a degree of collective control over the work-pace. At the same time, however, through productivity bargaining and the ideology of "profit-sharing," it institutionalized a common interest between the employer and trade-unions, representing the "collective worker," standing above the daily conflict of interests between employer and individual workers or sections. Moreover, the development of responsible trade-unionism, with the state's ideological, financial and political encouragement, proved a powerful force for political stabilization in the face of growing political turmoil during the New Deal — a stabilization which was threatened by Ford's continued virulent opposition to unions. Nevertheless, it was not until he was forced to recogniz the UAW by a massive strike in 1941 that Ford conceded the failure of his divinely-inspired mission.

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The Routinization of Charisma: Ford and his Foundation

Fordism had resolved its first crisis by developing different forms of labor control from those initially advocated by Ford — forms of control which abandoned the attempt to create the New Man and allowed a degree of negotiated autonomy to labor organizations. The development of a stable industrial relations framework at plant-level was closely associated with the development of industry-wide negotiating structures and the political recognition of trade-unions as the legitimate channel for the representation of their members' interests. The Fordist utopia had collapsed, to be replaced by the new dream of the New Deal. Although the latter had superficial similarities to the social-democratic vision of the Keynesian Welfare State, it was a populist rather than a social-democratic strategy. The Keynesian Welfare State was thus not a development of the New Deal, any more than the New Deal was a development of the original Fordist project.

The New Deal strategy could hardly have been more different from Ford's project in according full political recognition to labor. Yet it rested on a naive faith in the compatibility of capitalism and industrial democracy. It was articulated by the populist sociological theories of institutionalism, which saw trade-unions as the authentic representatives of labor interests, i.e., as the bulwark of democracy within capitalism. It failed, however, to recognize any fundamental conflict of interests between capital and labor, thus assuming that a democratic political system could provide the framework for the rational resolution of conflicts. The viability of the strategy depended on the low level of development of labor's political organizations, on the limited development of trade-unionism, and on the demoralization of trade-unions in the depths of the depression. Thus it was already running into difficulties with the 1936/7 wave of strikes and sit-downs before it was given a new lease onlife by the imperatives of the coming war.

The limits of the New Deal utopia became apparent immediately after the end of WWII. The victors had to supervise the economic, social and political reconstruction of the vanquished, but they also had their own problems of conversion to peace, and these were their first preoccupation. These problems centered on the appropriate forms of institutionalization of labor relations once wartime conditions had passed. Employers sought to reverse gains made during wartime by organized labor, while workers sought to take advantage of relatively tight labor markets, high profits, and potentially booming product markets to secure further advances. The result, particularly in the US, was a period of

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sharp, if episodic and fragmented, struggle and marked institutional instability, whose political risks were symbolized by the Left leadership of a number of powerful CIO unions.

The problem of stabilizing the system of industrial relations in the US was acute, but abroad it was even worse. This was exacerbated by the naivety of the first US attempt to export the New Deal to the defeated powers by encouraging the growth of trade-unions as the bulwark of democracy and the guarantee against a resurgence of fascism. They did prove to be bulwarks of democracy, but not necessarily dedicated to the realization of Fordism and the American Way. The rapid growth of militant trade-unionism, often under communist leadership, threatened to hand Europe and Japan to the Communists. Trade-unionism had to be depoliticized by reducing it to the representation of sectional economic interests and negotiating within the constraints of a legally regulated framework of collective bargaining. It had to be represented politically only as interest groups within a pluralistic political system. It had to be rescued from the Reds and re-incorporated into the ideals of Fordism.

Once again it was sociology that came to the rescue in the nick of time to provide the strategic perspective for the post-war capitalist reconstruction on a global scale. This time it was not Ford's defunct Sociology Department, but a much grander institution, the Ford Foundation, with intimate links with the US government and particularly the CIA. In 1948, the Ford Foundation commissioned a study on future policy whose report (the Gaither Report) was enormously influential in determining both the CIA's strategy during its 1950s "liberal" phase, and the development of the social sciences. The most influential single project which resulted from the latter part of the initiative was the "Inter-University Study of Labor Problems and Economic Development," which first bid for funds in 1951 and submitted its final report in 1975.[27]

The Gaither Report was concerned with identifying those critical social problems "where the gravest threat to democracy and human welfare

27. The final report listed 35 books and 43 articles as products of the project. The program is best known through its theoretical summation. See Clark Kerr et al., *Industrialism and Industrial Man* (London: Heinemann, 1962). The original proposal was for a program entitled "Labor Relations and Economic Development," which sought to understand "the position of the working class in a variety of societies" to assist "the development of an effective American world-wide strategy." The full story is chronicled in James L. Cochrane, *Industrialism and Industrial Man Revisited* (New York: Ford Foundation, 1979), which reprints the original proposal on pp. 61-73.

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lies."[28] The report warned of the dangers of complacency, which arises from an identification of existing institutions with the "spirit of democracy." Thus anti-communism alone was not sufficient. It was first necessary to reform American institutions to give democracy the "right to grow," so as "to rid ourselves of treason without jeopardizing freedom." The report stressed the importance of national defence and the dangers of isolationism, but it was scathing in its critique of the democratic pretensions of existing US institutions. It expressed anxiety about the inadequacy of a political system that catered to special interests rather than reflecting the will of the people. The report emphasized the importance of achieving high and stable levels of income and employment at home and abroad and stressed the need for a "more complete understanding of human behavior" to determine the causes of industrial conflict. It reported an "unusual degree of dissatisfaction" with the failure of the education system to offer equality of opportunity and to develop "individual purpose, character and values." It warned of the dangers of "inadequate emotional adjustment" to "vast and rapid changes . . . with resulting political, economic and social unrest." But despite this chronicle of inequality, discontent, conflict and dislocation in the heartland, the report was clear that the defects of the American system were only superficial. They could be remedied by a comprehensive and ambitious program of development of the human sciences, of which the "industrial society" project, dominated by Kerr and Dunlop, was the most important and influential result.

Without indulging in a rehash of the familiar theory of industrial society, which is the meat of modern sociology, it is sufficient to note that it defined an altogether more humanistic and optimistic Fordist project, which it expected would sell better on world markets than Ford's earlier offer of hard work and puritanical self-discipline. Kerr's was not a picture of industrial society as it is, even in the US, but an "ideal-type" of industrial society in which a happy, multi-skilled, well-educated, individualistic, achievement-oriented, socially, occupationally and geographically mobile, culturally homogeneous, psychologically healthy work-force constantly adapted to rapid technical and social change, resolving its conflicts peacefully through the appropriate channels of conflict resolution and an appropriate industrial relations system. Although for Kerr the development of such a functionally integrated

28. H. Rowan Gaither Jr., *Report of the Study for the Ford Foundation on Policy and Program* (Detroit: Ford Foundation, 1949), p. 14.

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society was ultimately inevitable, there were many barriers to be removed along the way. The primary task of the sociologist was to show how to remove them. While Ford's Sociology Department taught the New Man to behave according to the will of God and human nature, Kerr's Sociology Department taught the Newer Man (no, he did not have any women either) to behave according to the will of Mammon and the spirit of industrialism. Whether he (and his wife and two kids) liked it or not was irrelevant. Once he recognized its inevitability, he would accept it.

Strange Bedfellows: Ford and Keynes

It was one thing to draw up a blueprint of the new Fordist utopia. It was quite another to implement it. The sociologists and the Department of Labor, the CIA, the AFL, the ICFTU, and any number of initials and acronyms could all do their bit, but the restructuring of industrial and political relations depended on the ability of the system to offer secure employment, rising wages, and adequate welfare benefits, none of which it had been able to deliver consistently in the past. Nor was it clear how such benefits could be delivered in the future, for there was a variety of diagnoses of the past limitations of capitalism, and a variety of panaceas for its reform. It is a commonplace of theories of Fordism that Keynesian-Welfarism is a central component of the Fordist model. Although the Keynesian-Welfarist rhetoric has been widely employed for half a century, the reality has been rather different. Both in theory and in practice, the framework of post-war reconstruction and the foundations of the post-war boom were provided by orthodox liberal democracy. Far from being a source of stability, Keynesian-Welfarism was a response to a growing crisis and, far from resolving it, only deepened and further politicized it.

In the immediate post-war period, the dominant progressive diagnosis and panacea was one or another variant of Keynesian-Welfarism. Yet it was not Keynesian-Welfarism that dominated post-war reconstruction and laid the foundations for the post-war boom. In the US, Keynesian-Welfarism was associated with the New Dealers who bore the brunt of the blame for the post-war resurgence of labor conflicts in the US and the advance of the Left in Europe and Japan. Thus, within a couple of years, there was little to distinguish between Keynesian-Welfarism and Communism. In Britain, there was a Keynesian-Welfarist strand in the Labour Party, but its primary emphasis was productivist. Welfare reforms were confined within production.

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Although after the war there was fear of a depression with a rapid rise in unemployment, it soon became clear that the primary danger was inflation. The primary barrier to reconstruction was global imbalances in the structure of production, which underlay the dollar shortage and trade and currency restrictions. While Keynesian measures were widely used to check inflationary pressures, and Keynesian rhetoric was common currency, no government in the post-war decade was committed to Keynesian full employment policies at the expense of its commitment to contain inflation. So Keynes can hardly be credited with the prosperity and stability of the post-war boom. From 1947 on the strategy of reconstruction was based unequivocally, both in theory and in practice, on the rapid liberalization of international trade and payments, culminating in 1958 with the restoration of general currency convertibility. It was this liberalization — not Keynesianism — which fueled the post-war boom.[29]

The boom made possible a "post-war settlement" between capital and organized labor which permitted, encouraged, and then enforced the generalization of Fordist production methods. This post-war settlement included a growth of the welfare apparatus, whether publicly or privately funded, with the primary emphasis on contributory benefits for labor's best paid and most secure sections, and markedly inferior provision for those without the necessary qualifying contribution record. But these achievements were limited. By the end of the 1950s, economic problems were mounting in Britain and the US: inflation, unemployment, pauperism, urban decay and racism pointed to the limits of the liberal achievement of the post-war decade. For social democrats the achievements of the post-war years held out the promise of more health, education, welfare, better housing, rising wages, and a growth in democratic participation. By 1960, McCarthyism and post-war liberalization had apparently cleared the stage for social-democratic Keynesian-Welfarism to assume its historic role.

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29. The first post-war example of Keynesian expansionist rhetoric was the US Defense Department's argument at the beginning of the 1950s that rearmament would be costless in mobilizing otherwise idle resources — an argument immediately falsified by the Korean War inflation. The first case of a government committing itself in practice to full employment at the expense of price stability was the British in 1957, when Harold Macmillan overruled Thorneycroft's proposed cuts in public expenditure and sought alternative means of combating inflation. On the question of Keynesianism and the state see Simon Clarke, *Keynesianism, Monetarism and the Crisis of the State* (Aldershot and Gower, VT: Edward Elgar, 1988). On the liberal framework of post-war reconstruction, see Peter Burnham, *The Political Economy of Post-War Reconstruction* (London: Macmillan, 1990).

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It soon became apparent, however, that growing economic and social problems were not just a few loose ends to be tied up. Johnson's dream of the Great Society lasted only a couple of years before it was engulfed by the Vietnam War. Harold Wilson's project of technological and social modernization barely got off the ground before it was swept away by economic crisis. Far from resolving the economic, social and political problems, Keynesian solutions only tended to intensify them. The rapid growth of state expenditure imposed a growing unproductive drain on profits. Expansionary policies fueled inflationary pressures. Growing state intervention encouraged popular political mobilization and politicized economic decision-making. In short, the relation between Fordism and Keynesianism was about as close and stable as one can imagine the relation between Ford and Keynes would have been.

The Crisis of Fordism and the Crisis of Capitalism

Post-Fordists might grant that they have exaggerated the stability of Fordism, while still insisting that the source of the 1970s crisis lay in the inflexibility of Fordist production. In a sense, the crisis was caused by the inflexibility of existing institutional arrangements but, as in previous periods of crisis, this inflexibility was not a feature of production technology but of labor resistance institutionalized in the forms of industrial relations and political representation that had been developed as the provisional resolution of previous labor conflicts. The key to breaking down this inflexibility was, accordingly, not the introduction of new methods of production but the removal of the basis of labor resistance by restructuring the institutional forms of labor representation. It was only on the basis of this restructuring of class relations that there was any possibility of the profitable introduction of new methods of production.

Pressures on profitability had been mounting from as early as the mid-1950s, although the very high rates of profit initially made it possible for capital to absorb such pressure, while still allowing latitude to meet claims for rising wages and social and welfare expenditure as the means of securing social peace and political stability. These pressures, however, intensified through the 1960s and early 1970s as the sustained boom led to increasing international competition and fueled labor demands, channelled through the institutionalized systems of industrial relations and the political representation provided by the Keynesian Welfare State.

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The pressure of competition was felt most keenly in those countries, most notably Britain and the US, where world market strength had made it necessary to invest in new production methods. While labor productivity stagnated, fixed costs were kept down, corporate indebtedness was kept low, financial and social risks were minimized, and profits remained high. As competitive pressures eroded profitability, previous institutional frameworks — from corporate financing, through production management, shop-floor organization, payments systems and trade-union bargaining procedures to health, welfare, pension and housing provision — increasingly became barriers to the technical restructuring of production required to meet the competitive challenge. Some of these institutional frameworks, such as corporate management structures or investment financing, could be restructured relatively easily. Other institutional structures were those through which labor articulated its interests and could not be so easily dismantled. Thus the main source of the inflexibility inhibiting the restructuring of production was labor resistance. The result was that growing competitive pressures precipitated growing industrial conflicts — not only over wages and social benefits, but increasingly over production, wage bargaining and wage payment, health, education and social security.

Between 1966 and 1980, the conflict between Keynesianism and Monetarism was the political expression of this struggle. Political pressure prevented the British and US governments from responding to the 1974 crisis with the kinds of sustained deflationary measures adopted by the German government. Instead, they resorted to a variety of inflationary means that alleviated the threat of recession but also sustained labor's bargaining strength and reduced pressures on backward capitalists to invest in new production technologies. Nevertheless, chastened by the 1974 crisis and under growing financial pressure, the state pursued increasingly relentless restructuring strategies primarily designed to restore fiscal solvency. This was achieved not by developing production capacity, but by intensifying labor, holding down wages and gutting health and welfare benefits. By the end of the decade, the institutional basis of labor resistance had been substantially eroded so that, in response to the 1979 crisis both British and US governments were able to pursue sharply deflationary strategies.

At first the 1980s offensive was still dominated by the attempt to restore profitability through the intensification of labor and the reduction of the real wages of the more vulnerable sectors of labor. This confrontational strategy was not dictated by capitalist stubbornness in

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refusing to recognize the liberating potential of the new technology, but by labor's residual strength. Institutional restructuring was necessary not for the introduction of any particular technology, but to restore control over the labor process. Only with the restoration of profitability could new capital become available for new investments, and only with the restoration of control of the labor process could these new investments prove profitable. Thus the institutional restructuring was imposed by the crisis of capitalist reproduction — not by the requirements of any particular technology. This is why the same process took place in every branch of production, whatever its technology: in mass production industries, in heavy industry, in extractive industries, in transport and communications, in services and in the public sector.

There is nothing post-Fordist about this restructuring. The success of the capitalist offensive removed many of the barriers that had previously inhibited technological change to create conditions in which new technologies could be profitably introduced. But these technologies are not introduced on qualitatively different terms from any of their predecessors. Like Ford's production line, they are introduced merely to increase profits. Some sectors of labor have benefited from the introduction of new technologies, just as Ford's assembly-line workers benefited from the introduction of the Five Dollar Day. But just as competitive pressures from new, more highly developed and more flexible forms of Fordism soon forced Ford to introduce Pinkerton's men and the Service Department, so the flexible specialists and niche marketeers are already coming under pressure from competitors who have managed to reconcile economies of scope with economies of scale. The crisis of Fordism is nothing new; it is only the latest manifestation of the permanent crisis of capitalism.

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*Racism and Its Mirror Images**

Alain Policar

Taguieff's previous works, especially his study of the "New Right," have led him to examine the foundations of politics in terms of the fundamental cleavage of the other into enemy/foe. Thus all politics aims either at disqualifying the other, if he is recognized as a simple adversary (*echthros*), or at annihilating him, if he is considered an absolute enemy (*polemios*). From this perspective, Taguieff has traced the radicalization of the French Right, which has insisted on French identity and has appropriated Left themes, particularly "the right to be different."[1] He focuses on the axiological opposition "we vs. foreigners" typical of nationalist imagery. This dualist representation of humanity effectively reduces what belongs to individuals to what belongs to groups, and naturalizes all discrimination. Thus it becomes the basis for a *neo-racism*, which Taguieff calls "differential racism" — a kind of racism which has gone unnoticed until the extreme right or national-populists substituted the language of ethnicity, mentality, identity, difference, etc. for the biologistic discourse founded on race. Since classic racism has been delegitimated by contemporary genetics, it is no longer possible to found typological reasoning on the concept of race. Given its Left credentials, the praise of difference could hardly be claimed to be explicitly racist.[2]

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* Originally published in *Les Temps Modernes*, No. 507 (October 1988), pp. 75-109. Translated by Eleni Mahaira-Odoni. This is a discussion of Pierre-André Taguieff, *La Force du préjugé* (Paris: Editions la Découverte, 1988).

1. Pierre-André Taguieff, "Le Néo-Racisme différentialiste," *Langage et société*, No. 34 (December 1985), pp. 69-98.

3. Pierre-André Taguieff, "L'Identité nationale saisie pour les logiques de racisation," *Mots*, No. 12 (March 1986), pp. 89-126.

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Taguieff shows that heterophobic racism represents only one of its ideological variants. By distinguishing differential logic from discriminatory logic, this approach provides a general model of racism. The two formulations, heterophilic and heterophobic racism, easily flow into each other so that they cannot be found in a pure state. Thus it is crucial to distinguish the two logics in order to escape the ideological vision of racism advocated by the anti-racist vulgate, which is both confused and overly dogmatic.

Taguieff's project calls for a modification of our thinking habits: anti-racism is shown to be predicated on the existence of an absolute enemy, racism. Embroiled in mimetic rivalry, anti-racist discourse can only speak of conspiracies. Thus it becomes ineffective and ends up reduced to a mere image of racism. In constructing an imaginary enemy and an imaginary world, i.e., a world without prejudices, contemporary anti-racism turns into a new obscurantism.

Anti-racist reason has been polemically established for the past century through attacks on racism, thus distorting the paradox of making racist those whose behavior it denounces by demonstrating the reversibility of stereotypes. Mythical knowledge of racism must be stigmatized and replaced by an analysis of how racism is attacked. "Anti-racism lacks the self-knowledge necessary for constituting knowledge about its opposite, racism."[3]

Three kinds of racism can be identified. *Primary racism*, a very general psycho-social phenomenon, should be distinguished from *secondary racism*, a more refined form usually called ethnocentrism or xenophobia, and *tertiary racism*, which deploys the vocabulary of race and related scientistic legitimations. This typology has the advantage of approximating ordinary usage, but it also tends to legitimate xenophobia by naturalizing it. In so doing, it raises once again Levi-Strauss' controversial distinction between racism in the strict sense and ethnocentrism. He describes the latter in terms of "common inclinations and attitudes which would be illusory to imagine that some day humanity could or would wish to overcome."[4] In other words, ethnocentrism is a functional prejudice. As Taguieff points out, however, Levi-Strauss is simply reformulating in fancy terms what is ordinarily called racial prejudice. This is allegedly "the price to pay to preserve the value system of every family or community."[5] Levi-Strauss considers cultural differences secondary

3. Pierre-André Taguieff, *La Force du préjugé*, *op. cit.*, pp. 53-54.
4. Claude Lévi-Strauss, *Le Regard éloigné* (Pais: Librairie Plon, 1983), pp. 15-16.
5. *Ibid.*, p. 15.

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in comparison to the ultimate goal of ethnology, which seeks "to discover the laws underlying the observable diversity of beliefs and institutions."[6] This theoretical universalism feeds into a critique of excessive communication that blurs differences and encourages the universalization of culture. Every cultural convergence weakens diversity so that, in order to preserve it, it is best to reject all communication. As Sperber has pointed out, this concession to relativism can be explained in terms of Levi-Strauss' refusal to spell out the universal matrices underlying variable manifestations, or to identify general autonomous mechanisms, e.g., linguistic competence. This concession has significant consequences and may explain its inability to think beyond racism. Thus Todorov claims: "If I wish to communicate successfully with others, I presuppose a frame of reference that encompasses both my universe and theirs."[7]

Taguieff undertakes this task by outlining a universalist orientation and a "heroic humanism" antithetical to Levi-Strauss' anti-humanism. He breaks down anti-racist arguments into six kinds, only two of which will be examined here. The first divorces the problem of different races from racism, thus separating legitimate and illegitmate racial discourse. The second, defended by numerous contemprorary geneticists, denounces the scientific pertinence of the concept of race. It reasons as follows: since 19th century scientism has loaded the concept of "race" with connotations feeding into racist ideologies, today it has to be discredited in the name of science in order to delegitimate racism. Accordingly, the roots of all racism lie in correlating the definition of distinct races with the establishment of a hierarchy among them. Thus Jacquard has proposed a radical lexical therapy: "Given the biological implications that many writings, doctrines and policies have indelibly attached to 'race,' would it not be wise to discard it as a useless and dangerous tool?"[8]

Both positions reach an impasse as soon as it is realized that it is possible to have racism without race. Racism does not need the word "race" or related scientistic legitimations. For Guillaumin, the reality of race is not biological but social and political: it is a "social category of exclusion and murder."[9] This state of affairs leads Taguieff to develop

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6. *Ibid.*, p. 61.

7. T. Todorov, "Lévi-Strauss entre universalisme et relativisme," *Le Debat*, No. 42 (November-December 1986), pp. 173-92. See also M. Giraud, "Le Regard égaré: ethnocentrisme, xénophobie ou racisme?," *Les Temps Modernes*, No. 459 (October 1984), pp. 737-50.

8. A. Jacquard, "A la recherche d'un contenu pour le mot 'race.' La Réponse du généticien," in *Le Racisme, Mythes et Sciences* (Brussels: Editions Complexe, 1981), p. 36..

9. C. Guillaumin, "'Je sais bien mais quand même' ou les avatars de la notion de 'race'," *Le Genre Humain* No. 1 (1981), pp. 55, 65.

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certain "ideal types" of racism. There is a "normal" racism found in the discriminatory ideology of colonialism and modern slavery. It can be boiled down to two axioms: inequality (we are better) and universality (we are humanity). This implies "two correlated attributes: the quality of universality for those who represent the 'we' and the racial quality (particularity) for those who stand for others."[10] According to Hersch, those in power blame others "for belonging to a race while they themselves belong to the universal."[11]

The second type of racism is premised on a definition of self as race *as such*. It distinguishes those who constitute a race from those who are outside it. Since the former are defined against all humanity, this approach implies the negation of the universal. While "normal" racism results in colonialism and exploitation, both of which are legitimated by postulating the intellectual inferiority of those exploited, the second type is embodied in Nazism — an ideology predicated on the preeminence of difference and the elimination of the other, whose physical differences are sufficiently vague to generate suspicion and fear of mixing. The goal is thus to annihilate the other by regarding him as the absolute enemy (*polemios*).

While classical (discriminatory) racism creates hierarchies, which implies comparability and the potential education of the other, differential racism, driven by the phobia of mixing, leads to extermination. Rank preservation in the former parallels absolute respect for blood in the latter. Differential racism sees the other as absolute evil: something obeying no rules and belonging to an "enemy species" which can be legitimately destroyed. While discriminatory logic warrants relations between the self and the other, differential logic rejects it and inexorably leads to the elimination of the source of impurity — the other. While the former racism serves economic purposes and is not its own end, the latter affirms its values through its effects. The other's very identity warrants its annihilation. This postulates the risk of self-annihilation.

Premised on the fear of mixing, differential racism illustrates how racism is ultimately rooted in the fear of rupturing identity inside the family group. The ability to easily recognize one's kinsmen implies the denial of individual identity in order to exalt collective identity. According to Jahoda, "the fact that this is so historically and geographically widespread implies that it is an attempt to resolve a fundamental and

10. Pierre-André Taguieff, *La Force du préjugé*, *op. cit.*, p. 164.
11. J. Hersch, "Sur la notion de race," *Diogène*, No. 59 (1967), pp. 125-42.

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probably universal human conflict."[12] Abrupt changes in living conditions cause crises of self-confidence, vulnerability, and the beginning of hostility toward others. Jahoda's psychoanalytic reading traces the origin of this identity disturbance to early childhood. Child dependency on adults creates a sense of insecurity, which in some cases may remain a fundamental personality trait. This feeling may become particularly painful in a context characterized by individuals with clearly defined identities. "If he succeeds to convince himself that this manifest identity implies a certain inferiority, he will endure his own confusion better [by recalling that] at least he is not Black or Jewish."[13] This explains how this vague identity is constructed through the desire to reject. Similarly, the other's difference is not rejected as bad in itself, but because it is perceived as threatening one's own difference. "Here we rediscover the opposite of heterophobia: the exaltation of difference — heterophilia as a guarantee against those who risk destroying the differential principle of social and cultural structuration."[14]

Taguieff produces five propositions regarding the distinction between the two logics of racialization. The *first* is the rejection of the notion of universality: the universal is an abstraction, only differences have real existence. In other words, "man" does not exist because diversity is the fundamental reality of the world. "If we define universalism by postulating that in a normative universe there are values common to all humans, communicable among all and objects of possible and desirable credence, universalism is directly challenged by variable images of difference, linguistic pluralism and diversities among people."[15] Taguieff's analysis of the "retort strategy," or of "the right to be different," constitutes the most heuristic example. In the contemporary context, the political anchoring of differentialist discourse is undermined. It has no fixed political basis, so that the ideal it underlies may be considered like an anti-racist slogan. Ethnology, by contributing to the foundation of cultural identity studies on the basis of relativist presuppositions, is equally responsible for this. From a culturalist standpoint, human beings are actually nothing but the products of their cultures. In spite of its anti-racist claims, this attitude reaffirms, as Roheim has stressed, that "you

12. Maric Jahoda, "Relations raciales et santé mentale," *Le Racisme devant la Science* (Paris: Unesco/Gallimard, 1960), p. 506.
13. *Ibid.*, p. 509.
14. Pierre-André Taguieff, "L'Identité insécurisée. Genèses d'un mythe politique," *Cahiers Bernard Lazare*, No. 115-116 (November 1986), pp. 15-63.
15. Pierre-André Taguieff, "Le Néo-Racisme différentialiste," *op. cit.*, p. 86.

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are entirely different from me but I forgive you."[16] Psychoanalytic anthropology illustrates that the defense against the intermixing of people constitutes the latent content of relativism.

The *second* proposition of racism is the fixed categorization of individuals which posits community above all other criteria and dissolves the individual into a collective entity. Ones inclusion in the unity of the human genus falls short of defining the individual in anthropological terms. "The individual is but one letter in the book of race; a letter has no meaning. But the book does."[17]

The *third* proposition is the postulate of absolute difference between categories of belonging. Paradoxically, the absolutization of difference leads to its disappearance and thus to the incomparability of terms. Since human types differ, they cannot inter-communicate. There are no common values or common realities. Moral and cognitive realism are the result of a diversity of beliefs and cultural practices. Relativists have not really understood that the object of anthropology is not the collection of cultural variations but rather the explanation of their existence. By taking inventory of variations, anthropologists have shown the variability of the human genus, and their work on symbolic practices or cognitive processes has shown the universality of signifying structures.

The cultural incommensurability thesis gains strength from the anti-rationalist current in the philosophy of science, which sees in science an "organized system of beliefs" and places it alongside other beliefs. When relativists become sociologists of science, they often succumb to a naive sociologism that prevents them from comparing competing paradigms. There seems to be no absolute universal criterion of rationality. The relativity of scientific knowledge becomes the counterpart of moral relativism. In either case, everything matters equally. No cultural practice can be the object of moral judgment and no theory is objectively better than another. This leads to what Taguieff calls paradoxical auto-racializing — a term he uses to describe unattached intellectuals and rootless militants who, preaching the abolition of the desire for solidarity, cultivate a certain self-hatred. Bouveresse remarks on the characteristic wish of post-modern intellectuals to escape their own community. "The fear of becoming once again implicated in one or another great

16. Geza Roheim, *Psychanalyse et anthropologie* (Paris: Gallimard, 1967), p. 416.

17. Georges Vacher de Lapouge, cited in Pierre-André Taguieff, "Racisme et anti-racisme: modèles et paradoxes," in A. Béjin and J. Freund, eds., *Racismes-Anti-racismes* (Paris: Méridiens/Klincksieck, 1986), p. 260.

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traditional history, which alludes to the ideal subject or to the universal human community, ultimately entails a categorical refusal to identify with one's own historical community."[18] This refusal is illusory. It assumes it is possible to discard all prejudice so that this rejection of all mediation produces epistemic superiority. For Taguieff, this is a ruse: starting with a simple inversion of the anti-Jewish denunciation of cosmopolitanism, anti-racism serves as the mirror image of racism. The struggle against prejudice is a generous program, but the dream of a prejudice-free world breeds its own prejudices.

The *fourth* propositon consists in naturalizing previously absolutized differences in order to render cultural distances totally unbridgeable. If naturalizing has had a historically biologizing bias, today a culturalist trend is emerging. Cultural belonging has been fetishized to the point that it has created a real cultural nature. Paradoxically, the good anti-racist intentions of relativist advocates are the root cause of new modes of racialization. The relativist universe is scientific nonsense. Still, in recent decades, it has gained considerable credibility. The anti-racist praise of difference has become absolutized, thus bringing to light one of racism's constitutive traits — the theorization of absolute separation among human groups. Differentialist racialization, camouflaged in a discourse founded on the legitimacy of preserving national identities, comprises a stratum of the general definition of racism.

A *fifth* proposition, the discriminatory interpretation of differences, is now clear. This is "classic" racism which, paradoxically, reintroduces the universal dimension excluded by differentialist racism. By not rejecting in principle the comparability of collective entities, it represents a moderate version of racism. This logic may create hierarchies, exploit, dominate and exclude, but does not necessarily exterminate.

These two essential distinctions of racialization — discriminatory (hetero-racialization) and differentialist (auto-racialization) — correspond to two heterogeneous axiological orders: on the one hand, individual-universal values; on the other, traditional-communitarian values. The distinction (first made by Tönnies and Dumont) is refined by Taguieff when he constructs a four-part model combining the axiological axis (universalism-communitarianism) with the ontological (spiritualism-materialism). This enables him to distinguish four racist formulations. These correspond to four types of anti-racism that allow the identification of four polemical structures. Debates between racists

18. Jacques Bouveresse, *Rationalité et cynisme* (Paris: Editions de Minuit, 1984), p. 159.

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and anti-racists, first conducted within a simple polemical framework (partisans of the unlimited progress of Enlightenment against materialist polygenists) have become much more complex.

Taguieff has shown that if so-called "racist" prejudices are to be overcome, it cannot be done by prefiguring a fictitious prejudice-free world. Anti-racism is rooted in a tradition that, proclaiming the reign of unlimited critical reason, breeds a new obscurantism in the name of what the author calls "anti-fanatical fanaticism." Understanding its genealogy becomes indispensible for thinking through a philosophically coherent anti-racism. Following Marx, he cautions against critique as passion, as the deterioration of the desire for "critical" discussion (of truth) seeking to annihilate an adversary viewed as an absolute enemy. The adversary to be eliminated is the racist, the one who prejudges. The anti-racist, on the other hand, wants to suspend judgment. The strategy proposed is premised on eradicating the past. "Prejudices are mental barriers raised between men, just as barriers between territories are materialized prejudices."[19] This is how communitarian entities are to be dissolved and universal human society is to be established. Generalized race-mixing will rid racial prejudices of all empirical foundation. "In order to accomplish the anti-racist program, the human genus must be made up exclusively of racially undifferentiable individuals. As long as there are inter-group differences, there is ground for prejudice."[20] The main demand of today's leading anti-racists is a call for instituting racial mixing as a method for salvation. The contradictory character of this claim becomes clear with respect to another assertion, equally essential, which calls for the preservation of differences. To desire a "multiracial" society and at the same time to promote indifferentiation seems paradoxical. Difference is perceived as a source of inequality. Thus the primacy accorded to the demand for equality implies the final abolition of differences. This oscillation between mixing and difference redirects the fundamental antinomy throughout French ideological debate since the Revolution — an antinomy shaped by the logic of assimilation and differentiation.[21]

"Dogmatic ideologico-political rationalism" — a significant ideological constellation in the debate — is rooted in a hasty reading of Cartesian thought. According to Descartes, we can conceive of a society,

19. Pierre-André Taguieff, *La Force du préjugé*, *op. cit.*, p. 191
20. *Ibid.*, p. 191.
21. Pierre-André Taguieff, "Racisme et anti-racisme: modèles et paradoxes," in *op. cit.*, pp. 281-83.

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purely rational, atemporal, single and universal, but existing society is necessarily temporal and therefore irrational, diverse and variable. This results in a distinction between "what can be reformed according to laws of reason — the individual soul" and "what remains imperfect by its historical nature," which must be made the object of reasonable consensus — the sociopolitical order and the host of its prejudices."[22] In other words, the social should not be treated as the individual. This is the essential warning that ideological-political Cartesianism tried to ignore. In the process, it forgot that the desire to improve the human condition reaches an absolute limit in the historicity of the social and political order. Provisional morality and rational politics must be constituted in the realm of political action, so as to protect politics from fanaticism.

The fundamental dogma, offered as an established scientific truth, is a thesis concerning the rupture between the biological and the socio-psycho-historical. Questioning this dogma is an error *par excellence*. The cultural can only be self-explanatory. This radical anti-reductionism, rejecting any attempt at explanation, stems from an opposition to science that extols the exploits of science. Thus, much like racism, dogmatic anti-racism comes about by denying authority to everything affirmed by the latter. Consequently, if racial prejudice remains, although unable to become rooted in instincts, it is because of its cultural origin, historical presence and economic implications. If prejudice is not founded on nature but is historical, specific and contingent, it can disappear. This links up with a conspiracy thesis: racial prejudice is a myth which helps to justify conditions of exploitation. Thus it is an invention of those who are interested in perpetuating exploitation. Having located the causes of prejudice, the logical conclusion is to act on them. This is the happy marriage of the Cartesian tradition to Marxism, whereby racism constitutes false knowledge — an ideology.

What dogmatic, hegemonic anti-racism fails to see is its opponent's capacity to adapt to critiques of racism. Denouncing the opponent's prejudices is an infinitely reversible mode of polemical argument. "Racists" and "anti-racists" remain prisoners of this circle of mutual denunciations and accusations. The monocausal analysis of racism reproduces the explanatory schema of racism itself, i.e., its fundamental reductionism, since it implies the reduction of people's diverse backgrounds to a racial universe. Prejudices are neither natural nor eternal, nor are they

22. Pierre-André Taguieff, *La Force du préjugé*, *op. cit.*, p. 203.

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historically limited to capitalist modernity. Their power comes from their multi-dimensionality. Studying these factors can produce genuine understanding — the kind that does not substitute the will for critical lucidity with the wish for soothing certitude. The call for lucidity abandons the simplistic alternative implied by the racism/anti-racism dichotomy. Either there is pure universalism that reduces everything to collective belonging or there is the exclusivist exaltation of difference. Universalist and communitarian violence are definitely antagonistic but very much alike. The need to go beyond racism calls for a return to ethics.

Universalism is problematic because, for some, it is reduced to the perversion and distortion created by abstract universalism, within which collective entities have no reason to continue being. The objective is to outline a hermeneutics of "the right to be different" as implied by human rights, premised on a principle of universality which does not excludes the positive recognition of differences. Cultural acquisition as such (i.e., of general cultural categories), which contributes to the process of humanization, must be distinguished from the acquisition of a specific culture (ethnicization). Humanization and ethnicization are complementary. Human behavior cannot be reduced to its ethnic aspect. Once this aspect is "completely" explained, it is necessary to explain what makes this behavior specifically human, i.e., its atemporal aspects. "What is universally human is precisely the use of the temporal and the contingent toward more complete self-expression."[23] Plural identities within distinct cultures, free from all racist reductionism, is at the root of the universalist exigency.

Taguieff limits the import of common sense anti-racism. If radical empiricism and dogmatic relativism are violently challenged by common-sense philosophy, they are both unrelated to racism, which is a modern ideology. The fact is that there are "few contemporary intellectuals committed to a common-sense anti-racism"[24] calls for constructing a common-sense philosophy which would also be a critical philosophy.[25]

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23. Georges Devereux, *Tragédie et poésie grecques* (Paris: Flammarion, 1975), p. 8.
24. Pierre-André Taguieff, *La Force du préjugé*, *op. cit.*, p. 458.
25. François Armengaud, "Moore et le sens commun. Don Quichotte au secours de Sancho Pança?," *Revue internationale de philosophie*, No. 158 (1986).

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*The New Cultural Racism in France**

Pierre-André Taguieff

After Mitterrand's stunning victory on May 10, 1981, an anti-Left front was mobilized around such themes as security, "freedom of choice" in education, immigration, etc., — all inspired by a rhetoric of radical opposition predicated on a strong ideological distinction between Right and Left, and premised on a populist reinterpretation of ultra-liberal motifs (against the welfare state and in favor of the market society of property-holders and entrepreneurs) and authoritarian-nationalist themes. The end result was the Right's victory in the legislative elections on March 16, 1986. After Mitterrand's reelection in May 8 and the legislative elections in June 1988, political conflicts and ideological debates have diminished. A peculiar normalization has set in.

Along with a return to the centrist myth, there has been a break-up of the Right in an atmosphere characterized by indifference, internal conflicts, and a change of personalities. Issues are no longer defined by the rejection of the Left, but by Le Pen and the *Front National*. The *Front*'s high visibility in parliament after the March 1986 elections and Le Pen's impressive showing in the first round of the presidential elections allowed the Left to revamp its critique of fascism. The strategy of transferring illegitimacy from Le Pen to the *Front*, and from the *Front* to its allies, turned out to be surprisingly successful. In the aftermath of the defeat of the Right's candidate, a split in the Right precipitated a

* Translated by Russell Moore.

1. Cf. Georges Balandier, *Le Détour. Pouvoir et modernité* (Paris: Fayard, 1985), pp. 152-53; Balandier, *Le Désordre. Eloge du mouvement* (Paris: Fayard, 1988), p. 203.

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dissolution of the anti-Left alliances already shaken during the phase known as *cohabitation* (March 1986-May 1988).

Since summer 1988, conflicts between opposing factions have been simplified. On one side are the beneficiaries of the greatest ideological respectability, identified by their explicit reference to the rights of man, democratic values, even to "morality." This is articulated through the spectacular activities of a neo-humanitarianism and anti-racism, which have become a new cultural tool for politicizing youth. On the other side are the "racists," who are either members or potential members of the *Front National* or worse, i.e., those who claim to have no "enemies on the Right." The Socialist Party, the primary beneficiary of this ideological reshuffling, has constructed its new identity around two ideological poles: a managed economy defended on the basis of successful performance in the face of foreign competition, and a polemical humanitarianism — an ideology deployed in defense of the "values" threatened by the very existence of the *Front National*.

An analysis of the polemical construction of rightist political identities entails reinterpreting the Left-Right opposition on the basis of representations, values and norms articulated between 1981 and 1986. The Club de l'Horloge, a network of right-wing intellectuals organized in 1974 but significant only after 1979, best embodies the Right's intellectual counter-offensive. It contributed a French version of neo-conservatism to the Right's victory in the March 1986 legislative elections. The main thrust consisted of little more than economic liberalism and political and cultural nationalism. There were two distinct series of ideological appropriations. The first was the will to "*circumvent*"[2] the Left rhetoric of denunciation ("fascism," "racism," "extreme Right," "totalitarianism," etc.); the second, the establishment of a *positive image* through conformity to predominant values. Beyond the need for mere respectability, the New Right is seeking the public appeal and enthusiasm required for political struggle.[3]

Anti-Values and Rejection

The New Right's anti-fascist argument, predicated on an interest in the "historiography" of fascism, asserts that socialism is the common source of "fascism" (Italian fascism and German National Socialism) and

2. A strategy clearly explained and recommended by Yvan Blot in "Pour une stratégie républicaine," in *Echecs et injustices du socialisme* (Paris: Albin Michel, 1982), p. 150.

3. On the importance of the emotive dimension in political life, see Pierre Ansart, *La Gestion des passions politiques* (Lausanne: L'Age d'Homme, 1983).

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communism.[4] In this context, both are seen as embodying a system of ethical and political anti-values, which the New Right opposes with a new norm defining "true" anti-fascist conduct identified with anti-socialism. Such a reversal removes any collusion between right-wing parties and the "fascist" phenomenon (*lato sensu*).

The New Right's counter-offensive of anti-racism began also in 1983-1984. Launched by the *Front National* and its national Catholic auxiliary (the Comités Chrétienté Solidarité, the daily *Présent*, the weekly *Minute*), the reversal[5] concerning racism was accepted by a portion of the conservative wing, which saw itself as part of "national liberalism" as defined by the Club de l'Horloge. The first move was to stigmatize anti-racist Leftists as anti-French, anti-European, anti-Western, or anti-White "racist"s for siding with the enemies of all the aforementioned. The second was the substitution of one definition of "racists" for another.

The most ideologically effective ploy, which has eluded Left criticism, is the differentialist argument. The praise of difference, after being emphasized by the ethnic doctrine of GRECE (Groupement de Reserches et d'Etudes pour la Civilisation Européene), was rapidly accepted within the neo-chauvinist camp and became fundamental to the nascent heterophobic ideology.[6] This praise of difference was reduced to the claim that true racism is the attempt to impose a unique and general model as the best, which implies the elimination of differences. Consequenlty, true anti-racism is founded on the absolute respect of differences between ethnically and culturally heterogeneous collectives. The NewRight's "anti-racism" thus uses ideas of collective identities hypostatized as inalienable categories.

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4. Club de l'Horloge, *Socialisme et fascisme: une même famille?* (Paris: Albin Michel,1984) [*Actes du VIIIe Colloque du Club de l'Horloge*, Paris: November 26-27 1983]; Jules Monnerot, *"Désintox"* (Paris: Albatros, 1987) [This is a collection of papers read at various colloquia of the Club de l'Horloge. One of the central themes was the "expurgation of guilt" of the West in general, and of the Right in particular, by eliminating the "toxins" of "communist and pro-Third World ideologies"]).

5. On the "reversal of arguments," see Marc Angenot, *La Parole pamphlétaire* (Paris: Payot, 1982), pp. 219-20. On the strategies of reversal in politics, see Pierre-André Taguieff, "Le néo-racisme différentialiste," *Langage et Société*, no. 34 (December 1985), p. 75; and "L'identité nationale saisie par les logiques de racisation," *Mots*, no. 12 (March 1986), p. 89ff. The anti-anti-racist counter-offensive originated with the traditionalist Catholic circles associated with Maurrassian nationalism: Jean Madrian, Georges-Paul Wagner, François Brigneau, André Peyresq, "Le soi-disant anti-racisme. Une technique d'assassinat juridique et moral," *Itinéraires*, special unnumbered issue (December 1983).

6. On GRECE's role in the formulation of right-wing anti-anti-racism, see Pierre-André Taguieff, "La Rhétorique du national-populisme," *Mots*, No. 9 (October 1984), pp. 131-32.

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A third argument completes the first two — the disjunction between Right nationalists and Europeanists, on the one hand, and the "racist" phenomenon reduced to the desire to erase differences, on the other. Differentialism is opposed to universalism, as authentic anti-racism is to true racism. Together, these three arguments reverse classical anti-racist discourse.

Anti-totalitarianism is the latest reversal, which draws on all the political consequences of three generations of liberal (or neo-liberal) critiques of totalitarianism — understood as a tendency toward state management and centralization. After the economic critique of the 1930s (Von Mises, Hayek), the political critique of the 1950s (Arendt, Aron), and finally the conjunction of the sociological (Baechler, Boudon, Bénéton), historical (Besançon, Furet) and philosophical (Lefort, Castoriadis) critiques, the absolute rejection of the totalitarian model and of all paths supposedly leading thereto became a precondition for the democratic ideal. The welfare state thus became the agency of totalitarianism *par excellence*. To be "anti-totalitarian" means to refuse unconditionally all socialisms, above all the fatal first step of state control on the road leading to totalitarianism.

The purpose of these first three ideological appropriations was to make possible a *positive self-re-evaluation* of the Right which, starting with liberal conservatism, could be extended to various nationalist families who — except for the Gaullist faction — had been discredited after 1945. These appropriations were carried out by means of the rhetorical model of *reversal*, i.e., by borrowing the adversary's own arguments and turning them against him. Fascism, racism, and totalitarianism become at once key political words and demonized representations constituting the object of a consensual rejection. They function as criteria for distinguishing enemies, adversaries/competitors and even absolute enemies from friends.

Positive Values

Two strategies emerge in the struggle for legitimate appropriation. The first is a matter of presenting oneself as *sharing* with one's designated adversary, but with even more authenticity, the latter's declared values. The objective is to appropriate exclusive use of the adversary's arguments and thereby both to prevent those very same adversaries from using their own arguments and to lock the adversary into a defensive position with an indefensible future. However, there is another series of ideological appropriations of values regarded as positive. First, there is

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the celebration of a cultural *modernity* and the call for social *modernization*, where the modern is reduced to economics and technological innovation and linked to individualist, productivist and managerial values.[7] Second, there is the appeal to the "real" as opposed to the utopian, messianic, and ideological. This is a recent French recycling of the thesis of "the end of ideology."[8] While the tendency toward "deideologization" has never been confirmed,[9] the theme remains ingrained in the social imagination, where propaganda can always rediscover it and exploit it. Third, there is *the praise of established roots*, which applies to property and all forms of inheritance,[11] no less than to identities based on origins.[12] Here, the "right to be different" changes from a Left slogan (in the 1970s) to one of the Right (in the 1980s) — a displacement radicalized in neo-racist uses of the differentialist principle. But this "right to be different" is a symptom of the aspiration to continuity and a longing for community that the modern destruction of traditional forms necessarily generates. Nostalgia for a close-knit community, for emotional ties inexorably neutralized by democratic contractualism and the atomization fostered by industrialization, are the affective substrata of the ideology of established roots. Ethnicity and neo-nationalism substitute for the meaning once provided by traditional societies.

Fourth in this series of ideological appropriations is the defense of *liberty* in an explicitly *anti-statist* perspective. Liberal-capitalist ideology defines its horizon by opposing the initiative and the responsibility of

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7. Cf. Comités d'Action Républicaine, *Demain, le chêne. Pour la France contre le socialisme (Le Projet des Comités d'Action Républicaine)* (Paris: Albatros, 1982), p. 27ff.; RPR, *Libres et responsables. Un projet pour la France* (Paris: Flammarion, 1984), p. 11ff.

8. Cf. Daniel Bell, *The End of Ideology. On the Exhaustion of Political Ideas in the Fifties* (Glencoe: The Free Press, 1960); La Fondation Nationale des Sciences Politiques (sous la direction de G. Vedel), *La dépolitisation: mythe ou réalité?* (Paris: A. Colin, 1962).

9. Cf. Pierre Ansart's introductory remarks in his *Idéologies, conflits et pouvoir* (Paris: Presses Universitaires de France, 1977), p. 7ff.

10. As examples of the ideological use of the anti-ideological ideal, see Jean-François Revel, *La grâce de l'Etat* (Paris: Grasset, 1981), and *Le rejet de l'Etat* (Paris: Grasset, 1984). An emotionally neutral account, in the industrialist tradition, is provided by Raymond Barre, *Réflexions pour demain* (Paris: Hachette, coll. "Pluriel," 1984), pp. 12-13, 18-19. Similarly, the "real" may be joined to "liberty" so as to define a "liberal" politics. See M. Prigent, preface to *La liberté à refaire* (Paris: Hachette, coll. "Pluriel," 1984), p. 14.

11. Cf. Georges Berthu and the Club de l'Horloge, *Vive la propriété!* (Paris: Albin Michel, 1984); Yvan Blot, *Les racines de la liberté* (Paris: Albin Michel, 1985), pp. 75-99.

12. Comités d'Action Républicaine, *Demain, le chêne*, *op. cit.*, pp. 102-21 ("Enraciner les citoyens"); Blot, *op. cit.*, pp. 9-13; Club de l'Horloge, *L'Identité de la France* (Paris: Albin Michel, 1985). See also *Front National: Pour la France. Programme du Front National* (Paris: Albatros, 1985), p. 167.

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citizen-entrepreneurs to the social hell of the interventionist state bureaucracy.[13] This generates the dream of a liberated civil society brought about by the marketplace freed of the state. This is the utopia of spontaneous social organizations. However, it contradicts the longing for security which demands order — something which can be guaranteed only by a strong state. Fifth, then, is *the demand for security*, and this demand for the security of people and property is a demand for order which translates into greater state authority. Yet, since the state is often negatively perceived as cut off from the people and suspected of inefficiency, this demand is bound to be frustrated.

The sixth appropriation is the ideal of the *national body* as a categorical imperative of political action. The decline of the internationalist project, whose goal was the abolition of national boundaries, and a world-wide renewal of national ideologies has meant the relegitimation of nationalism.[14] This ideal has become "a *common stake* in all movements and all parties that, directly or indirectly, portray themselves as the defenders of national interests."[15] Beyond the fact that nationalism "has everything it needs to please,"[16] and heads the list of leading ideologies (socialism, fascism and liberalism), it is the most natural ideology of the modern state and its most effective spontaneous mode of legitimation. In terms of total particularism, one consequence of a progressive discrediting of universalism begun with WWI has been that nationalism today has no serious ideological competitor and is thus an essential component of any concrete political project. The seventh and last appropriation is the exclusivist anchoring in the *republican tradition*. This is a polemical reappropriation meant to deprive the Socialist Left of a century-old heritage.

Because mindsets change slowly, it is too early to evaluate the full impact of the ideological offensive launched by the Club de l'Horloge in July, 1979.[17] The almost simultaneous presence of nationalism and

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13. *Le Péril bureaucratique* (Paris: Club de l'Horloge, 1980); CAR, *op. cit.* (1982), p. 23ff.; the RPR's version, *op. cit.* (1984), pp. 45-47.

14. Pierre Ansart, *Idéologies, conflits et pouvoir* (Paris: Presses Universitaires de France, 1977), p. 255: "Having become the common reference point of nearly every contemporary political movement, nationalism ceases to be the object of critiques."

15. Pierre Ansart, *op. cit.*, p. 258 (italics added).

16. Jean Baechler, *Qu'est-ce que l'idéologie?* (Paris: Gallimard, 1976), pp. 253, 346. From the viewpoint of ideological efficiency, its exact opposite is liberalism, which "has nothing that could please" (*ibid.*, p. 348), due to its lack of a demonizable enemy.

17. On July 19, 1979, the association "Les Nouveaux Républicains" was created by the leaders of the Club de l'Horloge (cf. Pierre-André Taguieff, "La Démagogie à visage républicain," *Revue Politique et Parlementaire*, no. 915 [March-April 1985], p.

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the republican tradition within the same political context is not surprising. The realism of the national interest is paired with the symbolism of the "one indivisible Republic." The nation-state rediscovers its fundamental reference that is not only the most acceptable but the best able to mobilize, because it is *the* source of intense passions (love of self and of one's group, hate for the enemies threatening national unity).[18]

The French Right's political ideal during the first half of the 1980s can be summarized as follows: It was a stranger to fascism and could thus present itself as anti-fascist; it is against all forms of racism, without any bad conscience or self-hate; it is a defender of freedoms against the totalitarian temptation; it is modern, in the sense of progress; it is realistic; it is deeply rooted in a history and a collective memory; it stands for freedom to innovate, to take risks, and is against state paternalism; it stands for order and authority, courage and firmness; it supports mass rallies and national interests; it is anchored in the republican tradition.

After a long period of Purgatory, during which it could only appear by wearing a mask of shame, the Right returned to the public stage under its own name. This self-relegitimation also implied a delegitimation of its adversary with the following arguments: It is a mentality that has given rise to communism as well as fascism; it is covertly racist; it presupposes a personality predisposed to totalitarianism; it is archaic, out-of-date and even reactionary; it is ideological, utopian, unrealistic and thus ineffective; it is rootless, without an identity or memory and, consequently, manipulable by totalitarian forces; it is the accomplice and profiteer of the state's omnipotence, omnipresence and helplessness; it is lax, always siding with disorder, andthus impotent in the face of social violence; it tends to be hateful and nationally divisive, fomenting class divisions and class struggle; it is indifferent to the national interest, insensitive to

92ff.). Cf. notably: Y. Blot, "République, féodalités et bureaucratie," *Contrepoint*, no. 34 (Fall 1980), pp. 103-07; *and* "Pour une redécouverte de la tradition républicaine," *Contrepoint*, No. 37 (15 April 1981), pp. 77-90 (and the dossier: "La tradition républicaine," *ibid.*, pp. 75-110); Comités d'Action Républicaine, *op. cit.*, p. 87ff. (Ch. 5: "Pour une République forte"); Jean-Yves Le Gallou, "La Révolution républicaine," preface to the new edition of the Club de l'Horloge's first book, *Les racines du futur. Demain la France* (Paris: Albatros, 1984), pp. 1-8 (Paris: Masson, 1977). Concerning the manipulations of the republican reference in the auxiliary organizations of "national liberalism," cf. Pierre-André Taguieff, "La stratégie culturelle de la 'Nouvelle Droite' en France (1968-1983)," in *Vous avez dit fascismes?* (Paris: Arthaud/Montalba, 1984), pp. 131-32; and "Les droites radicales en France," *Les Temps Modernes*, No. 465 (April 1985), pp. 1826ff. On the ambiguities of the reference to the Republic in the rhetoric of the *Front National*, cf. Pierre-André Taguieff, "La doctrine du national-populisme en France," *Etudes*, Vol. 364, No. 1 (3641) (January 1986), pp. 27-46.

18. Cf. Jean Baechler, *op. cit.*, pp. 346-47; Pierre Ansart, 1977, *op. cit.*, p. 257.

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national principles and thus an enemy of the people; finally, as a willing or "objective" accomplice of Marxism or communism, whose ultimate end is the destruction of republican values, it is an enemy of the Republic, of the heritage of the French Revolution, and therefore "counter-revolutionary."

This demagogic operation *constructs* political stereotypes within *zones of ambiguity* — stereotypes subsequently deployed to invoke exclusive rights to particular values. New authoritarian projects are designated as "liberal," neo-racism is passed as "the right to be different," and nationalist currents rooted in anti-democratic traditions claim the idea of "direct" democracy as their own.

From the "Right to be Different" to a New Cultural Racism

Racism's new modes of legitimation derive from two fundamental operations: the production of new projects concerning the "defense of cultural identities" and the refinement of new, acceptable arguments predicated on the privileging of difference. New commonplaces concerning cultural identity and difference have crystallized around the question of immigration. They are meant to conceal fears of racial intermingling, perceived as indirect genocide and ethnocide. Consider the following statements from texts published by radical right-wing groups in France: "The truth is that the people must preserve and cultivate their differences. . . . Immigration merits condemnation because it strikes a blow at the identity of the host culture as well as at the immigrants' identity."[19] "It is because we respect ourselves and others, that we refuse to see our country transformed into a multiracial society in which each one loses one's specificity."[20] "Peoples cannot be summarily qualified as superior or inferior, they are different, and one must keep in mind these physical or cultural differences"[21] "In our mind, the immigration question can no longer be resolved except by the radical expulsion or organized repatriation of all foreigners. This does not apply to residents who are assimilable, i.e., those from the European Community."[22]

The thesis of inassimilability of non-European immigrants and the racialist overlapping of biological and cultural arguments are used to

19. Robert de Herte [Alain de Benoist]. "Avec les immigrés contre le nouvel esclavage," *Eléments pour la civilisation européenne*, No. 45 (Spring 1983), p. 2.
20. Pierre Pascal, "Les vrais racistes," *Militant* [*Revue nationaliste populaire d'action européenne*], 16, No. 156 (January 1984), p. 15.
21. Jean-Marie Le Pen, "Le Pen et l'Eglise" [interview], *National Hebdo*, No. 44, 19 (April 1985), p. 8.
22. "Pourquoi nous combattons" *Jeune Nation Solidariste* [*organe de Troisiéme Voie*,] No. 10 (July-August 1986), p. 6.

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promote respect for differences. The power of this new position comes from the fact that it is based on primary evidence and manipulates truisms by slightly altering them. Anthropological reality is reduced to what is most visible: everyone can see the differences in skin color or hear differences in accents. This immediate differential reality constitutes the grounding of neo-racism, portrayed as the defense of cultural identities and the champion of genuine anti-racism.

Paradoxically, racism can be articulated in terms of race or of culture, mindsets, traditions and religions, i.e., in the vocabulary of "specificities" or of "collective identities." Racism does not just biologize the cultural, it acculturates the biological. Racist thought may be developed in terms of either of these registers or may even be presented as a syncretism of genetic reductionism and absolute cultural relativism. Its most radical forms are not always the most visible, or the most easily refuted.[23]

There are two types of racism. A general type postulates the existence of a universal scale of values concerning races or civilizations, which are pinpointed as being suitable, less suitable or unsuitable, according to various criteria. A communitarian type establishes difference or group identity as an absolute. In this case, it is less a question of inequality than of incommunicability, incommensurability, and incomparability. The human species is broken down into self-contained, closed totalities. The differentialist imperative is the need to preserve the community as is, or to purify it. If the central obsession of discriminatory racism is the loss of rank, the debasement of superior peoples, the *idée fixe* of differentialist racism is the loss of what is characteristic, the erasement of the group's identity.

Discriminatory racism can be understood in terms of the classical theory of racial prejudice. It presupposes an imperial and/or colonial type of domination legitimated by the ideology of inequality of human types. The universalism of discriminatory racism derives from the positing of one model of hierarchical classification of races or civilizations. This formal universalism has nothing to do with the fundamental demand for universality of any ethics concerned with respect for individuals. There is no consistent anti-racism that does not postulate the dignity of every human being, whatever one's origins. This core of ethical anti-racism escapes all possible ideological instrumentalizations.

Differentialist racism cannot be reduced to a theory of inequality authorizing domination. Rather, it is predicated on the imperative of

23. For a more in-depth analysis, cf. Pierre-André Taguieff, *La Force du préjugé* (Paris: La Découverte, 1988).

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preserving the group's identity, whose "purity" it sanctifies. It stigmatizes the mixing of cultures as the supreme mistake, and it vacillates between a system of exclusion (separate development/rejection) and a system of extermination (apartheid and genocide). Of course, history provides "impure" examples or syncretic illustrations of these ideal types of racism. But to confuse the two is a theoretical error with serious consequences both for the anti-racist struggle and for an understanding of racist phenomena.

The latest New Right doctrine (since 1979-1980) places the utmost importance on *difference*. What Benoist terms anti-racism is a radical reinterpretation of "the right to be different." With racism defined by disrespect of differences, the New Right rejects the very idea of a "differentialist racism." Racism can only be an avatar of biblical universalism, an ideological heir of the monotheism that "reduces" human diversity, the structure that eradicates differences. The New Right's anti-racism is a pseudo-universalism, whereas consistent anti-racism privileges universality over particularity. The right to be different is a *second implication* of a well-founded anti-racism: to grant this right pre-eminent status is to accept racism's premises. Respect for people involves the respect of their "cultural" choices. Universalism is not universalist enough and thus, in its shadow, thrives a racism which is reductionist, homogenizing, and hostile to biological and cultural diversities.

Anti-racism today must be subjected to a rigorous critique concerning its political instrumentalization, its contradictions and inconsistencies, and its lack of theoretical foundations. All too often the anti-racist struggle draws its concepts of racism from a worn-out, accusatory, anti-fascist rhetoric. The anti-racists difficulty during the last ten years in identifying what they are fighting is a result of a problem of definition. They persist in seeing racism only as the rejection of what is different (*heterophobia*), which blinds them to unprecedented, gentle and euphemized forms of racism — forms which praise difference (*heterophilia*) and substitute "cultures" for "races." The norm concerning respect of differences, far from embodying a fundamental human right (the right to otherness),[24] has helped to make the obsession of contact and the phobia of mixing, which is at the heart of racism, respectable, even honorable. To maintain cultural differences means avoiding intermingling, the ultimate threat and the alleged beginning of irreversible

24. Cf. Roger Mehl, "Dissidence et droits de l'homme," *Revue d'Histoire et de Philosophie Religieuses*, vol. 65, No. 2 (April-June 1985), p. 189ff.

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decline. Racism can exist either as the blame or the praise of difference, in terms of races or cultures/mentalities/traditions/beliefs.[25]

Racism and Nationalism

Exclusionary racism has been respectably introduced in the register of the generalized right to be different. Thus, on September 19, 1982, Le Pen declared: "We have not only the right but also the duty to defend our national personality and also our right to be different." In April 1985, Brigneau wrote: "It is better to avoid crossings and intermingling. Not so as to preserve the superiority of the race to which I belong, but its difference, its originality." In September 1987, Le Pen wrote: "I love North Africans, but their place is in the Maghreb. . . . I am not a racist, but a national. . . . For a nation to be harmonious, it must have a certain ethnic and spiritual homogeneity." It is therefore necessary "to resolve, to France's benefit, the immigration problem, by the peaceful, organized return of immigrants."

When the nationalist rhetoric unfolds without relying on euphemisms, the chauvinism describes the "task" of a "nationalist revolution" in the following way: "We consider that a nation rests, above all, on the ancestral values of blood and soil. We indicated — as a prerequisite to any detailed notion of a nationalist doctrine — that inassimilable foreign immigration threatened the very substance of our people, and that it was necessary to resolve this serious problem. We think, however, that this situation is a result of a general decadence of values of blood and soil — a situation threatened by the corruption of capitalist gold and the law of numbers."[26]

The inassimilability thesis, even when translated as the praise of irreducible cultural identities, or phrased in terms of "the respect of all peoples," can hardly avoid the fundamental postulate to which it refers. "One must respect the specificity of all the peoples of the world, that is to say, their traditions, their outlook on things, which are only the result of their genetic heritage."[27] The *Revue Nationaliste Populaire d'Action Européenne*, regrouping the first dissidents of the *Front National* (1981), postulated the differential biological determination of cultural identities. The "defense of the French" is reformulated either in the

25. Cf. Pierre-André Taguieff, "Le néo-racism différentialiste," *Langage et Société*, No. 34 (December 1985), pp. 69-98.

26. "Pourquoi nous combattons," *Jeune Nation Solidariste, organe de Troisiéme Voie*, No. 10 (July-August 1986), p. 10.

27. *Militant*, 15th year, No. 144, 1982, *Dossier immigration*, p. 14.

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broad language of cultural pluralism, or in the identity language of an ethnic nationalism predicated on the imperative to "remain oneself," whose other side is the exclusion of those-who-are-not-the-same. "Let the Algerians remain Algerian and the Senegalese, Senegalese: that seems legitimate and desirable, and that implies essentially that they stay at home or that they return there. What also seems legitimate and desirable is that we the French people remain French as well. . . . One never recovers from the mixing of bloods or cross-breeding which, itself, is an irreversible fact. . . . We want to remain ourselves."[28]

This national-racist discourse joins two obsessions: the erasure of identity and interracial mixing. Xenophobia derives from mixophobia. The foreigner is detestable only in that he is postulated as being inassimilable without provoking a destruction of community identity. That is why nationalists claim that with immigration "it is quite simply a question of the life or death of our nation."[29]

Since 1980, the New Right has reformulated its arguments for the rejection of "inassimilable" foreigners, individuals of non-European origin. Because of tolerant differentialism, the New Right has had to insist on the immigrants' own interests in *returning to their own homeland*. The undesirables must themselves be convinced of their undesirability outside of their nation of origin. In the name of an "other Third-Worldism" that would be confused with a "genuine differentialism" (inauthenticity being attributed to the defenders of the pluricultural society), Guillaume Faye declared with the serenity of the cynic or the naîveté of the indoctrinated that "in order to pursue the right to be different to its logical end, it would be necessary to refuse the multiracial society and envision the return of the immigrants to their country."[30] If, for national populism, the Arabo-Islamic immigrant is inassimilable to the body of a France forged by centuries of Catholic monarchy, for the New Right the immigrant is inassimilable because his cultural traditions are radically foreign to those of the pre-Christian European civilization that survives beneath the mental colonization carried out by 20 centuries of biblical monotheism. It is not with respect to the same substantial identity that immigrants of non-European origin are declared to be foreigners by nature. In both cases, the raising of alterity to the status of an absolute barrier between "us" and "them" is the beginning of a prescription for exclusion/expulsion. "We" are the descendants and heirs of the crusaders,

28. *Ibid.*, pp. 14, 16.
29. "Demain il sera trop tard," *Militant*, No. 153 (November 1983), p. 2.
30. Elé*ments*, No. 48-49 (Winter 1983-1984).

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"we" are the last legitimate sons of the Indo-European horsemen. To safeguard the integrity of this "we" implies the total rejection of any element of ethno-cultural heterogeneity. Pluralism must regulate only relations between ethnic groups, races and nations. It is not a question of practicing pluralism or differentialism in internal affairs of groups, whatever they may be. The praise of difference translates into the most ideologically respectable form of the will to keep everyone in their place. Behind the rejection of the multiracial or multicultural society there is a hidden postulate: the inevitability of racial struggle, as if there is a threat of conflict when different populations come in contact with one another.

From a defense of oppressed minorities and their "cultural rights," the "right to be different" has been transformed into an instrument of legitimation for exacerbated calls to defend a "threatened" national (and/or European) identity.[31] The real question of ethnocide has been degraded, after a formative period of extreme Left anti-Western rhetoric, to the level of an instrumental myth of nationalist propaganda

31. My criticisms of the political uses of absolute cultural relativism, within the framework of what could be called *European ethnophilosophy*, tie in with those formulated by the African philosopher Paulin J. Hountondji, in the face of a certain fundamentalism concerning the "Negro difference" that developed notably from a particularist reading of the "ethnophilosophical" hypothesis and a dogmatization of the claim to a "Negro" cultural identity (reminiscent of some statements by L. S. Senghor in 1939: "Emotion is Black, just as reason is Hellenic"; Sartre thought that he had found in the "reversal" of the words and representations of anti-Negro racism the "negative" moment of a "dialectical" movement — the movement of "anti-racist racism": "The Negro [unlike the Jew] cannot deny that he is Negro or claim for himself that abstract, colorless humanity: he is black. Consequently, he is cornered and faced with authenticity: insulted, subdued, he draws himself up, he picks up the word "Negro" that one has hurled at him like a stone, he assumes the responsibility of being Black in the face of the white man, and he does so with pride. The final unity that will bring together all of the oppressed in the same struggle must be preceded in the colonies by what I will call the moment of separation or negativity: this anti-racist racism is the only path that can lead to the abolition of the differences of race" ["Orphée noir," in *Situations*, III (Paris: Gallimard, 1949), p. 237]). Cf. Paulin J. Hountondji, "Langues africaines et philosophie: l'hypothèse relativiste," *Les Etudes Philosophiques*, No. 4 (October-December 1982), p. 403; and "Pièges de la différence," *Diogène*, 131 (1985), pp. 51-61; the problem is well formulated by Kouadio Augustin Dibi, "L'idée d'une 'philosophie africaine': du psychologisme à l'être-devenu," *Les Etudes Philosophiques*, *op cit.*, pp. 385-92, as well as by Jean Kinyongo, "La philosophie africaine et son histoire," *ibid.*, pp. 411-14. Everything is happening as if the New Right had imperceptibly worked to define a European ethnophilosophy: i.e., a philosophy of Greek origins, reduced to a differential manifestation of "Greekness," from which any aspiration to universality would have been eliminated. In a word, a new Eurocentrism. For an enlightening historical critique of the "Bantu" myth and the naturalist mystique implied by the doctrine of "Negritude," cf. Jean-Pierre Chrétien, "Les Bantous, de la philologie allemande à l'authenticité africaine. Un mythe racial contemporain," *Vingtième*

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with a certain French xenophobic (the *Front National*) or a Europeanist (the New Right) tendency. To the demands for exclusion in terms of differentialist justification, a master ideologue like Benoist adds many nuances, restrictions and disclaimers to seemingly innocent themes such as the "dialogue between cultures." The New Right appropriates this theme with the proviso that "cultures," in order to "discuss," must have "roots." In order to be open, a cultural system must be closed.

During the last ten years, emphasis on difference has shifted from the far Left to the far Right. But in doing so, the issue has returned to its true intellectual origins. "The racist recognizes difference and wants difference," wrote someone who knew the question well in 1941, Julius Evola.[32] If the differentialist argument has once again found a welcoming structure within xenophobic nationalism, that is because nationalism and differentialism are coextensive and participate in a dialectic of chauvinism. Right-wing nationalism implies, first of all, "the duty of peoples to remain themselves" (Ploncard d'Assac).[33] That is why, in returning to its origins, right-wing nationalism is so often converted into a *national racism*.

Siècle, No. 8 (October-December 1985), pp. 43-66. The historian concludes his study with an uncomplaisant opinion: "Bantu hyper-ethnism, forged from without starting with the linguistics and anthropology of the end of the 19th century, then reinvigorated from within as a variant of Negritude since the middle of the 20th century, is ideologically closer to the grand racial theories of the West than it is to the former African solidarities" (p. 66).

32. Julius Evola, *Indirizzi per una educazione razziale* (Naples: Conte, 1941); French trans., Gérard Boulanger, *Eléments pour une éducation raciale* (Puiseaux: Pardès, 1985), p. 29. Later on, Evola states more precisely: "[that] the revolutionary aspect" of the "'totalitarian' conception of fascist racism," according to which "race cannot be reduced to a simple biological entity (p. 47)," "finally consists in affirming the principle and value of difference, even on the spiritual level" (p. 49). The "revolutionary" affirmation according to which "there is a race of the soul and of the mind goes against the egalitarian and universalist myth, even on the cultural and ethical levels; such a statement makes the rationalist conception that affirms the 'neutrality' of values bite the dust (pp. 48-49)."

33. Cf. by way of an example: Jacques Ploncard d'Assac, "Les nationalistes," *Cahiers Universitaires* (Mensuel de la Fédération des Etudiants Nationalistes), No. 5 (January-February 1962), pp. 8-11. Nationalism is defined as "the search for laws suited to a country determined to keep itself uncorrupted in its national being" (p. 10). It is indeed a question of a myth concerning the purity of the collective identity, implying the categorical political imperative of preserving and defending the "nation-as-heritage," and the duty of transmitting that heritage "intact" to "its sons" (*ibid.*). Cf. as well: J. Ploncard d'Assac, *Doctrines du nationalisme* (Vouillé: Editions de Chiré, 3rd and enlarged edition, 1978), p. 35.

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Foucault's Ethical Quandary

Derek D. Nikolinakos

Many authors have located a paradox in Foucault's earlier work, specifically in his analysis of power and its ethical and political implications. While seemingly concerned with unmasking the *modus operandi* of power relations, he refuses to identify with any critical project seeking to overcome existing modes of domination.[1] This state of affairs has been explained in a variety of ways. Allegedly, he could not allow a privileged political position because this would have entailed a privileged epistemological position. According to Foucault, all regimes of power are regimes of truth and to postulate a privileged position of power is also to postulate a corresponding privileged position of truth. This outcome cannot be tolerated by Foucault's genealogy, which postulates that all regimes of truth are constituted under specific conditions of power. Consequently, there cannot be a liberating truth able to evaluate other operating truths, which creates a new space unaffected by existing power relations. Being predicated on existing knowledge and power strategies, every truth institutes domination even if it claims to play a liberating role. The subject to be liberated is always the object of subjection by a cognitive matrix organizing all knowledge, opinions, practices and customs. Owing to this indissoluble relation between domination and subjectification, liberation is seen as a naive and unrealizable ideal.

Another reason for Foucault's paradoxical position has to do with his concept of power. If power is everywhere, then the concept "loses its

1. Charles Taylor, "Foucault on Freedom and Truth," in David Couzens Hoy, ed., *Foucault: A Critical Reader* (Oxford and New York: Blackwell, 1987).

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explanatory content and becomes a ubiquitous metaphysical principle."[2] It follows that it is impossible to identify or formulate a position of resistance. The subject as a moral, political or aesthetic consciousness is fully determined and subjectified by the increasing surveillance and tightening of power — and so are its intentions. Consequently, emancipatory political action becomes a misguided ideal, since the goal of attaining an authentic life is also the product of a certain regime of truth and power. To speak the truth about oneself or about one's sexuality, is to subjugate oneself to new regimes of power and technologies of control rather than escape them. Foucault's concept of power seems to lead him to a "Nietzschean stance of neutrality," which refuses to attribute a liberating potential to any discourses of truth — especially those concerning the liberation of sexual desire.[3]

This attitude of neutrality is never abandoned and can still be found in later years when Foucault insists that ". . . the questions I am trying to ask are not determined by a preestablished political outlook and do not tend toward the realization of some political project."[4] He further maintains that critique "does not consist in saying that things are not good as they are" but in identifying the foundations underlying social practices, in order to make explicit their contingency.[5] But these claims generate a paradox when conjoined with his willingness to retain the notion of struggle. Consider the following: "critique doesn't have to be

2. Peter Dews, *Logics of Disintegration: Post-Structuralist Thought and the Claims of Critical Theory* (London and New York: Verso, 1987), p. 166.

3. Taylor, *op. cit.*, p. 80. Taylor's ascription to Foucault of this "Nietzschean stance of neutrality" is objectionable. According to Taylor (*ibid.*, p. 92), Foucault subscribes to the Nietzschean thesis that "the move from one set of practices to another cannot be seen as a liberation because there is no common measure between the impositions of the one and those of the other." This thesis cannot be attributed to Nietzsche since his political thought is not altogether consistent with his analysis of power and truth. Although a central project of Nietzsche's philosophy is to overcome morality, this project never comes to a satisfactory conclusion. This can be seen in his defence of the ideal of the superman as a healthier and preferable alternative to the various manifestations of the negative will to power. See my thesis *An Assessment of Freud's Metapsychology Relative to Nietzsche's Doctrines of "Will to Power" and "Eternal Recurrence"* (Johannesburg: University of Witwatersrand,1987). There are moral, social and political dimensions of this ideal which resist Taylor's attempt to consider Nietzsche's philosophy as "neutral." In other words, Nietzsche is committed to a normative project, the ramifications of which are obscured by his epistemological outlook, his analysis of power and the project of overcoming morality. Foucault's philosophy exemplifies the same paradoxical tendencies.

4. Michel Foucault, "Politics and Ethics: An Interview," in Paul Rabinow, ed., *The Foucault Reader* (New York: Pantheon Books, 1984), p. 375.

5. Foucault, "Is it Really Important to Think?," in *Philosophy and Social Criticism*, No. 9 (Spring 1982), p. 33.

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the premise of a deduction which concludes: this then is what needs to be done. It should be an instrument for those who fight, those who resist and refuse what is. Its use should be in processes of conflict and confrontation, essays in refusal. It doesn't have to lay down the law for law. It isn't a stage in a programming. It is a challenge directed to what is."[6] Rajchman's reading of Foucault follows a similar line, construing Foucault as claiming that "freedom does not basically lie in discovering or being able to determine who we are, but in rebelling against those ways in which we are already defined, categorized, and classified."[7] Since politics rests on the unwillingness to comply with existing rules and practices that determine who we are, Foucault's politics may be interpreted as advocating commitment to an "endless revolt."[8]

Thus Foucault's paradox can be stated as follows: on the one hand, he takes a "stance of neutrality," while on the other, he remains committed to a politics of resistance. These are irreconcilable tendencies. A possible reconciliation may be reached with a politics of resistance along voluntaristic lines, i.e., as a continuous revolt against existing codes and practices. But this is not satisfactory, since it is not clear why anyone should be committed to such politics if there is no escape from the grip of power and there are no criteria for differentiating between better and worse rules and practices. It is not surprising, therefore, that Foucault tried to divorce himself from this outlook.[9]

Neither the paradox nor its solution are satisfactory, for they also fail to take into account a variety of issues raised in Foucault's later thought, i.e., his attempt to undermine both a nihilistic and voluntaristic reading of his work. He both denies there is no possibility for resistance because society is a carceral system, and that contemporary culture should be subverted. The rebuttal of these readings is observed in Foucault's attempt to come to grips with the notions of liberation, ethics, subjectivity, etc., which introduce a normative dimension in his work. His normative concerns, as they appear in his later work, attempt to overcome the impasse of his early thought.

Foucault is neither a moral nihilist nor neutral.[10] His later position reveals a substantial normative dimension generally obscured by the

6. Foucault, quoted in Barry Smart, *Foucault, Marxism and Critique* (London and Boston: Routledge and Kegan Paul, 1983), pp. 135-6.
7. John Rajchman, *Michel Foucault: The Freedom of Philosophy* (New York: Columbia University Press, 1985), p. 62.
8. *Ibid.*, p. 93.
9. Dews, *op. cit.*, pp. 164-5.
10. Rajchman, *op. cit.*, p. 49.

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more prevalent tendency of his work to identify practices and codes governing life in order to clarify present predicaments and future options. The normative dimension is never entirely missing. It is present in *Madness and Civilization*,[11] where he criticizes the sharp distinction between madness and reason that has led to incarceration and intense surveillance of people considered "mad." This attitude is contrasted to the classical age and psychoanalysis, which exhibit a more reciprocal relation between reason and madness.

These concerns are still present in later writings.[12] Foucault maintains that criticism through genealogy and the archeological method seeks to identify what makes us what we are in order to exemplify the contingency of our situation and possible alternative ways we may constitute ourselves. One of the manifestations of this critical ethos is expressed in the production of critical discourses that interrupt well established forms of knowledge serving existing power relations. The goal is to introduce uncertainty in those who service them, e.g., doctors, teachers, etc. When he describes his position of "pessimistic activism" by claiming that "everything is dangerous" and that "the ethico-political choice we have to make every day is to determine which is the main danger,"[13] he identifies mental hospitals as one of these "main" dangers and the anti-psychiatric movement as the response to that danger. He adds that the movement's criticisms are correct and that its practices have led to better conditions. Because of this, Smart locates Foucault in the same camp as Critical Theory.[14] The task of genealogy reveals the normative dimension of Foucault's thought. Yet the emancipatory prospects of genealogy remain problematic. The question that needs to be asked is how does genealogy allow the identification of "dangers" and discourses which "refuse what is." To show the inadequacies of genealogy it is necessary to examine the theoretical underpinnings of the anti-psychiatric movement.

One salient feature is that the anti-psychiatric movement does not simply resist psychiatric institutions for the sake of resisting, since its practices are supported by specific analyses of existing social relations. In Italy, its activities are based on a theoretical framework influenced

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11. Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Pantheon Books, 1975).

12. Foucault, "What is Enlightenment?" in Rabinow, *op. cit.*, pp. 45-6.

13. Michel Foucault, "On the Genealogy of Ethics: An Overview of Work in Progress," in Hubert L. Dreyfus and Paul Rabinow, eds., *Michel Foucault: Beyond Structuralism and Hermeneutics* (Chicago: University of Chicago Press, 1983), p. 232.

14. Smart, *op. cit.*, p. 136.

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primarily by Marxism and psychoanalysis. This conceptual apparatus is constituted by a variety of claims, such as psychiatric diagnoses being founded on rigid categories of normality and abnormality, which in turn are based on the norms of the prevailing order; "normal life" being a form of madness; well entrenched categories such as health\illness, normality\abnormality, man\woman, etc., being repudiated for being rooted in class divisions; mental illness being sustained by mental hospitals; the curtailing of traditional psychiatric modes of treatment; the proportion of alternative forms of therapy, such as play therapy; the analysis of psychiatric intervention need to be analyzed in terms of the class struggle, etc.[15] In France, the anti-psychiatric movement exhibits a similar orientation, but it is more closely linked to psychoanalytic thought — initially to the work of Marcuse and Reich and later to that of Lacan.[16] What is common among these movements, in their chic or grass-root manifestations, is their affinity for Marxist and psychoanalytic theory. But Foucault's work is at odds with both traditions. As a result, his "critique" does not share the same assumptions about human nature, subjectivity, etc., which serve as the backbone of the anti-psychiatric movement. Because the latter is at odds with Foucault's anti-naturalism, his approval of its activities remains external to his theory.

These same tensions permeate Foucault's his concern with an aesthetics of existence, i.e., a beautiful life, which is not so much about beautiful objects but, rather, truth telling; it is the relation between truth telling and a beautiful existence that constitutes the "true life."[17] For the Cynics, this took the form of "challenging the erroneous institutions, beliefs and practices of all people."[18] Their resistance focused on adopting a natural lifestyle that involved the pursuit of physical training and the establishment of communal living, sanctioning poverty, rejecting social conventions in order to keep in touch with natural, i.e., animal, instincts, attaining sovereignty by opposing institutions and established customs, and by eliminating relations, e.g., familial, nationalistic, etc., for the sake of a "natural state" regarded as a state of liberation and self-sufficiency, etc.[19]

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15. Franco Basaglia, "Breaking the Circuit of Control," in David Ingleby, ed., *Critical Psychiatry* (New York: Pantheon Books, 1980).
16. Sherry Turkle, "French Anti-psychiatry," in Ingleby, *op. cit.*
17. Thomas Flynn, "Foucault as Parrhesiast: his last course at College de France," in *Philosophy and Social Criticism*, No. 12 (Summer 1987), p. 220.
18. *Ibid.*, p. 222.
19. *Ibid.*, pp. 221-22; Jason Xenakis, "Hippies and Cynics," in *Inquiry*, No. 16 (Spring 1973).

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But Foucault's concern with the aesthetics of existence forms an unholy alliance with the Cynics' conception of the "true life" for reasons similar to the ones encountered in his support of the anti-psychiatric movement. The problem may be formulated as follows. Truth-telling, according to the Cynics, involves a challenge to accepted institutions, beliefs and practices. This challenge is based on the assumption that the objects of one's challenge are defective. This evaluation rests on a variety of other assumptions concerning human nature. The more central one is that there is a human nature which is estranged through customs, institutions, etc. In other words, there is a distinction between the natural, i.e., everything that resembles the life of animals, and the artificial, i.e., everything man-made, such as money, customs, institutions, etc. The most basic tenet of Cynicism is the rejection of the artificial for the sake of a state of natural animality. This locates Cynical philosophy within a leftist framework, which, as Taylor has argued, aspires to a "liberated nature."[20]

These concerns clash with Foucault's anti-naturalistic and aestheticist orientation, which subscribes to a Baudelairean concept of liberation. For the latter, one attains freedom by rejecting nature's standards and constraints and by imposing one's own standards in order to create a new artificial self. As Taylor has it, Foucault's approach to liberation promotes "liberation from nature" rather than a "liberated nature."[21] Thus Foucault explicitly rejects the rhetoric of liberation. The latter should be treated with caution because: "there is the danger that it will refer back to the idea that there does exist a nature or a human foundation which, as a result of a certain number of historical, social or economic processes, found itself concealed, alienated or imprisoned in and by some repressive mechanism. In that hypothesis it would suffice to unloosen these repressive locks so that man can be reconciled with himself, once again find his nature or renew contact with his roots and restore a full and positive relationship with himself."[21] But this "hypothesis" is precisely what underlies Cynicism and the anti-psychiatric movement.[22]

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20. Charles Taylor, "Logics of Disintegration." in *New Left Review*, No. 170 (July 1988), p. 116.

21. Foucault, "The Ethic of Care for the Self as a Practice of Freedom: An Interview with Michel Foucault," in *Philosophy and Social Criticism*, No. 12 (Summer 1987), p. 113: Foucault, "On the Genealogy of Ethics," *op. cit.*, p. 245.

22. Foucault's anti-naturalism is even more perplexing in view of his claim that he is a Nietzschean. Not only does Nietzsche retain a distinction between the normal and the pathological, which when seen in its detailed form is reminiscent of the Cynical tradition, he also defends the repressive hypothesis by using it as the core of his

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Foucault articulates some normative concerns which conflict with major themes in his thought. His efforts to develop a more coherent account can be seen in his reluctance to give up the theme of liberation even if regarded as a problematic notion. He admits that there are domineering power relations which restrict or deny liberty and that liberation is the precondition for the practice of liberty. These conditions imply the elimination of a state of domination which renders individuals and groups incapable of altering existing power relations. That is, a state of domination is one characterized by power relations firmly set. Its effects are that practices of liberty are either non-existent or limited. This formulation also allows that economic, political or military practices may be exercised in such a way that decisions about the determination of freedom are eliminated.[23]

Furthermore, Foucault recommends that there should be rules of law, techniques of government, practices of self and a concept of freedom and rights which would permit the identification of arbitrary, "useless" and abusive authority in order to create relations exhibiting the least possible domination and coercion. Ethical concerns, then, become very significant because they take seriously the freedom of the subject, i.e., of its relation to itself and others. They allow the investigation of practices by which individuals create strategies to control the liberty of others. They are considered to be even more imperative in societies with a variety of games determining others' behavior.

Consequently, the task of philosophy is seen as challenging all forms of domination, whether "political, economic, sexual, institutional," for the purpose of illuminating mechanisms of subjugation and creating new possibilities. This follows from Foucault's more general principle concerning power, i.e., that "the power that one man exercises over another is always perilous."[24] This way Foucault's concern with ethics attempts to set thinking back on its feet after the demise of the spirit of the Enlightenment. By questioning the limits of thinking, the possibility of transgression arises along with the possibility of thinking new configurations of knowledge-power and relations to the self. Radical criticism makes certain conflicts obvious, which in turn instigates the desire to

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critique of civilization, Christianity, slave morality, etc. Although Foucault's aestheticism is rooted in Nietzsche's work, it is proportionally less significant than the naturalistic current in Nietzsche's thought which serves as the backbone of his critical philosophy.

23. Foucault, "The Ethics of Care for the Self as a Practice of Freedom," *op. cit.*, pp. 113-4.

24. Michel Foucault, "Is it Useless to Revolt?" in *Philosophy and Social Criticism*, No. 8 (Spring 1981), p. 8.

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transform things. Once thought is modified, it resists accepted modes of action and institutions which tend to eschew things and reduce them to the familiar.[25] All three axes of power, knowledge and ethics can be examined in order to identify and transform present practices.

Foucault's ethical efforts to minimize domination can be seen in the case of male sexuality, where liberation is said to have taken the form of freeing "one's self from an oppressive morality which concerns heterosexuality as well as homosexuality."[26] According to Foucault, this liberation did not achieve a happy subject with a new fully satisfying sexuality, but opened new power relations to be controlled by practices of liberty. Genealogy shows that the subject is a historical construct and that there is no "true self which has a truth which must be put into words."[27] Rather than articulating the truth about a deep self, Foucault's interests are motivated by the project "which enables one to get free of oneself."[28] It is by means of an examination of our customary ways of thinking and perceiving that a critical philosophy may pave the way for the possibility of creating new ones.

Besides these claims about the subject of liberation and oppressive morality, Foucault also expresses his ethical concerns in a variety of other instances. When, e.g., he examines the exclusion of the pleasure of women and boys in Greek ethics, he considers it "disgusting." This evaluation is in accordance with another reason for studying Greek culture, i.e., that of realizing a new attitude towards pleasure. This new outlook conceives pleasure in non-hierarchical terms, while it also maintains that the pleasure of the other "can be integrated in our pleasure, without reference either to law, to marriage, . . ."[29]

This is consistent with Foucault's evaluation of Greek ethics. The *telos* of classical Greek ethics, i.e., mastery of one's self, placed others in a position of subjugation. To be a master over one's self also meant mastery over others. What emerges from Foucault's writings is, on the one hand, the positive evaluation of Greek ethics for recognizing, contra Christianity, the impossibility of considering one's relation to oneself without also considering one's relation to others and, on the other, its

25. Foucault, "Is it Really Important to Think?," *op. cit.*

26. Foucault, "The Ethics of Care for the Self as a Practice of Freedom." *op. cit.*, p. 114.

27. Dreyfus and Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*, *op. cit.*, p. 258.

28. Michel Foucault, *The Use of Pleasure: The History of Sexuality* (New York: Pantheon Books, 1985), p. 5.

29. Foucault, "On the Genealogy of Ethics: An Overview of Work in Progress," *op. cit.*, p. 233.

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condemnation for its politics of exclusion. As a remedy for the latter, he advocates a future symmetrical, non-exclusive and tolerant ethics.[30]

Yet Foucault's his interest in liberation is problematic, since it is advocated in such a way that it cannot be defended within his theoretical framework. He says nothing as to how a morality becomes "oppressive" or how to differentiate oppressive from non-oppressive moralities. Moreover, it is difficult to see how the notion of oppressive morality can be dissociated from the notion of "true" subjectivity. To claim that a morality is oppressive is to maintain that it prevents the realization of a subjectivity towards which it is worth striving. Once a moral theory postulates such goals it assumes some concept of a better, happier subject. This has another implication. If an ethical theory is to postulate, among other things, a realizable ideal subjectivity, then it follows that ethics cannot be divorced from psychology, which in turn requires an account of what it is to be a person.

Foucault's concern with egalitarian relations is hardly a theoretical breakthrough. One of the main concerns of Freudian politics has been the undermining of hierarchical relations of exclusion and their replacement with horizontal relations fused with eros.[31] Yet, while psychoanalysis has at its disposal an extensive conceptual apparatus which enables it to articulate such egalitarian concerns and identify the conditions inhibiting their realization, Foucault does not.

The normative nature of Foucault's thought, as well as its impasse, becomes explicit with his acknowledgement of the indispensability of truth games in the process of thwarting domination. A truth game can only be opposed by playing another truth game which reveals that there are "*other rational possibilities, teaching people what they ignore about their own situation, on their conditions of work, on their exploitation.*"[32] But is this questioning possible within Foucault's account? In order to do so, he must appeal to rationality, whereas he has only been concerned with the identification of truth and power and has paid no attention to these matters beyond occasionally paying homage to Habermas' work.

What is more peculiar is that Foucault here raises the issue of exploitation after he has not bothered to consider Marxist analyses on the

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30. Michel Foucault, "Final Interview," in *Raritan*, No. 5 (Summer 1985), p. 3. Contra Dews (*op. cit.*, p. 199), the notion of non-coercive reciprocity in *Madness and Civilization* remains in later writings when Foucault condemns the non-reciprocity of Greek ethics.

31. Jeffrey Abramson, *Liberation and its Limits: the Moral and Political Thought of Freud* (New York: Free Press, 1984).

32. Foucault, "The Ethic of Care for the Self as a Practice of Freedom." *op. cit.*, p. 126 (emphasis added).

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subject. Furthermore, the identification of exploitation as a problem requires the acknowledgement of other related issues, e.g., alienation, and the deployment of conceptual tools able to treat it as a problem. But Foucault's politics does not allow the conceptualization of alternative truth games which identify "rational possibilities" or situations of exploitation. Thus, his thought remains undeveloped.[33] Another problem in Foucault's work is his inability to treat conditions under which freedom is curtailed by economic factors. Although he is aware of this problem,[34] he does not deal with it, nor does he deal with the complementary problem of human rights.[35]

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33. One way to salvage the critical and ethical dimension in Foucault's thought is by developing it along the lines indicated by contemporary debates on these issues. For example, Cohen has argued against the libertarian thesis that capitalism maximizes freedom by showing that capitalism institutes constraints on freedom through the institution of private property (See G.A. Cohen, "Freedom, Justice and Capitalism," in *New Left Review*, No. 126 (March 1981). Libertarians fail to see that private property is a "particular way of instituting freedom and unfreedom" since it diminishes the freedom of those who are not owners of private property. In this respect economic factors, along with social and legal ones, act as constraints on freedom and are therefore restrictive of human action. Without equality, power relations are bound to be uneven, and this undermines our liberty and autonomy. See also Allen Buchanan, *Marx and Justice: The Radical Critique of Liberalism* (Totowa, NJ: Rowman and Littlefield, 1982); Jon Elster, *Making Sense of Marx* (Cambridge, and New York: Cambridge University Press, 1985); John Roemer, *A General Theory of Exploitation and Class* (Cambridge: Harvard University Press, 1982).

34. One should not be surprised that Foucault is raising these issues since, as Dews has pointed out (*op. cit.*), Foucault always followed the predominant views of his day. After the demise of voluntaristic politics there has been a shift away from libidinal economics and schizoanalysis. For example, a reformed Lyotard, (*Just Gaming* [Minneapolis: University of Minnesota Press, 1985], p. 90), claims that "it is not true the search for intensities or things of that type can ground politics, because there is the problem of injustice." There seems to have been a realization of the dangers implied by the politics of intensities which attracted Foucault's interests. Recall Foucault's supportive claim that "*Anti-Oedipus* is an *Introduction to the Non-Fascist Life*" (Michel Foucault, "Preface," in Gilles Deleuze and Felix Guattari, *Anti-Oedipus: Capitalism and Schizophrenia* (New York: Viking Press, 1977), p. xiii), and Deleuze/Guattari's later rejection of any responsibility for the effects of their book, which goes along with their claim that "we (announce) the development of a generalized fascism" (Deleuze and Guattari quoted in Christa Burger, "The Reality of 'Machines,' Notes on the Rhizome-Thinking of Deleuze and Guattari" in *Telos* 64 [Summer 1985]). One should not be surprised by this "liberation from nature" orientation since, as Taylor has pointed out ("Logics of Disintegration," *op. cit.*, p. 113), it often culminates in fascist politics.

35. Foucault implicitly accepts the relevance of human rights (see "Truth, Power, Self: An Interview with Michel Foucault," in Luther H. Martin, Huck Gutman, and Patrick H. Hutton, eds., *Technologies of the Self* [Amherst: University of Massachussets Press, 1988], p. 15; and "On the Genealogy of Ethics," *op. cit.*, but he abstains from developing any systematic concept of rights due to his belief that a concept of the subject as the subject of rights is a throwback to a juridical concept at odds with his notion of freedom (Foucault, "The Ethic of Care for the Self as a Practice of Freedom," *op. cit.*, p. 131).

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At any rate, Foucault's attempt to escape a position of neutrality in his late work can also be seen in his support of an "aesthetics of existence" which requires the application of "aesthetic values" to "oneself, one's life, one's existence."[36] This ethics is concerned primarily with mastery over one's desires in order to pave the way for an intense and beautiful life. According to Foucault, this is still possible because there are ethical principles which relate to an aesthetics of existence and, therefore, can be adopted in contemporary life. By asking the rhetorical question "why should the lamp or the house be an art object, but not our life?," Foucault reveals both his predilection for the integration of an aesthetics of existence into life and his normative concerns. This defies the charge that Foucault's support for an aesthetics of existence is a regressive position celebrating a pre-rational consciousness and a "politics of nihilistic catastrophe."[37] With this aesthetic dimension, however, many other normative considerations emerge. For example, an aesthetic approach that views life as an art object is bound, at some point, to ask whether this life is good, beautiful, etc. While there may not be "clear and reliable standards for judging the merit of works of art,"[38] it does not mean that such issues can be avoided, and this leads directly to ethics.

In this context, it should be pointed out that ethical commitment does not presuppose a new foundationalism in disguise, as Foucault seems to believe, since as Putnam has pointed out, "there is no possibility of a 'foundation' for scientific knowledge, or for any other kind of knowledge."[39] What is problematic is the myth of neutrality, which is reminiscent of the scientistic desire to stick to facts by eliminating questions of value. If values cannot be eliminated from discourse, and the separation between fact and value is unacceptable because all inquiry presupposes value, then Foucault cannot avoid the predicament that his own account is essentially normative. Factual statements cannot be divorced from rationality, since a "fact is something that is rational to believe,"[40] which in turn presupposes certain values. If one considers issues pertaining to "rational possibilities," freedom, exploitation, oppression,

36. Foucault, "On the Genealogy of Ethics," *op. cit.*, p. 245.
37. Richard Wolin, "Foucault's Aesthetic Decisionism," in *Telos* 67 (Spring 1986), p. 78.
38. Nelson Goodman, *Of Mind and Other Matters* (Cambridge: Harvard University Press, 1984), p. 155.
39. Hilary Putnam, *The Many Faces of Realism: The Paul Carus Lectures* (La Salle, IL: Open Court, 1987), p. 79.
40. Hilary Putnam, *Reason, Truth and History* (Cambridge and New York: Cambridge University Press, 1981), p. 201.

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etc.,[41] it becomes impossible to ignore one's involvement in a value-laden enterprise concerned with ethics, criteria of relevance and rational acceptability. To claim that Foucault's preference for an aesthetics of existence over Christian ethics and the Enlightenment's faith in universal reason is "ultimately an interpretation to be judged in terms of its resonance with other thinkers and actors and its results,"[42] is to avoid confronting the problems with Foucault's normative orientation.

Foucault's later concerns with the aesthetics of existence and the technologies of the self attempt to remedy his earlier position where the subject is merely seen as the effect of power and knowledge. Whereas in his earlier work the subject is examined indirectly through the analysis of various constitutive practices, e.g., penal, medical, etc., later works highlight the constitution of the subject in its active dimension, i.e., in the ways it chooses certain practices in order to become a moral subject. With the development of the "care of the self" theme the emphasis is on practices of a different sort — practices that reinforce autonomy and whose main concern is "to transform one's self and to attain a certain mode of being."[43]

Nevertheless, Foucault's work reaches the problematic position of the more "positivistic" interpretations of Marx which eschews "the subjective, active, agential, and therefore free nature of the human and . . . subject it to a determinism borrowed from that very mechanistic physics which Marx himself held in disdain as undialectical."[44] This emptying of man that leaves him "playing out a socially fated role" is reminiscent of Foucault's early work. The task here is to see the extent to which Foucault manages to overcome this "positivism," or resolve this "ambivalence,"[45] i.e., whether he can provide a more meaningful account of subjectivity required by his ethical and political concerns so that his investigations do not become science fiction.

Foucault's late work, however, culminates with a general inability to confront various issues associated with the self, in spite of extensive excursions into antiquity. There are a variety of important lessons to be learned from Greek thought concerning the self, which are still significant today but ignored by Foucault. His failure to confront these issues

41. Dreyfus and Rabinow, *op. cit.*, p. 257.
42. *Ibid.*, p. 264.
43. Foucault, "The Ethics of Care for the Self as a Practice of Freedom," *op. cit.*, p. 113.
44. Marx Wartofsky, "Consciousness, Praxis and Reality: Marxism vs. Phenomenology," in Frederick A. Elliston and Peter McCormick, eds., *Husserl: Expositions and Appraisals* (South Bend, IN: Notre Dame University Press, 1977), p. 309.
45. Taylor, "Logics of Disintegration," *op. cit.*, p. 116.

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further undermines the possibility of developing a new perspective.

According to Foucault, sexuality in Greek thought was seen within a moral dimension constituted partly by techniques of the self defined as "those intentional and voluntary actions by which men not only set themselves rules of conduct, but also seek to transform themselves, to change themselves in their singular being, and to make their life into an *oeuvre* that carries certain aesthetic values and meets certain stylistic criteria."[46] This aesthetics was perceived as a power game where each action of pleasure was evaluated in terms of its promotion of an active or passive life style. By mastering one's passions one could also control others, and this was considered the most desirable state of being.

But ascetic exercises are impossible without reason as the dominant feature of the subject's psychical economy if pleasures are to be beneficial to the organism as a whole. Reason enables the subject to strive after the ethical substance of Greek erotics, i.e., self-mastery. Furthermore, ethical requirements for the proper deployment of reason presuppose a number of assumptions concerning the mind. Without such account it is impossible to flesh out the notion of a desiring subject. This is clear in Plato's psychology and its tripartite division of the mind. The psyche is perceived as a composite entity with each part able to determine action. Conflicts inevitably arise between the different agencies and can be resolved only when reason becomes the dominant agency. Once reason attains its position of mastery in relation to the other psychic agencies, i.e., the appetitive and the spirited parts, a state of justice is established which guarantees mental health and the organism's well being. In other words, the tripartite account of the mind presupposes mental health understood as the harmonious coexistence of various parts of the psyche under the domination of reason. Any deviation from this norm, as a result of the predominance of the other parts of the soul, is considered pathological. To "take care of the soul" is to attain mental health by means of the domination of reason.[47]

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46. Foucault, *The Use of Pleasure*, *op. cit.*, pp. 10-11.

47. According to Foucault, today's concern with the self has nothing to do with the same concern expressed in ancient times. These two conceptions are opposed because for the latter the main concern is with an aesthetics of existence, while for the former the governing idea is the discovery of one's true self via psychology or psychoanalysis (Foucault, "On the Genealogy of Ethics," *op. cit.*, p. 245). This is far from accurate. The so-called aesthetics of existence exemplify concerns also found in contemporary psychoanalytic theory, e.g., emphasis on the domination of reason and mastery of the drives, distinction between the normal and the pathological, concern with the transformation and creation of a more affirmative subject, etc. These considerations are common to Platonism, Cynicism, Nietzschean psychology and psychoanalysis. Consequently,

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These features, however, are not sufficiently articulated by someone like Foucault, who believes in the relevance of an aesthetics of existence. He ignores them in Plato's philosophy because he thinks that "the texts in the Platonic debate which give evidence of the relation to the self seem relatively restrained."[48] This is mistaken, since Plato's psychology is replete with recommendations concerning how one should relate to the self. Plato's ethics emphasize actions and the virtues necessary for an inner state of harmony. As Annas has argued,[49] one of the serious drawbacks of Plato's ethics is that happiness and pleasure are not seen as dependent on others, but concern one's relation to oneself, i.e., to different parts of one's soul.

More significantly, Foucault's anti-naturalism, his insistence that "the self is not given to us,"[50] prevents him from paying attention to Plato's concern with human psychology. According to Foucault, our identity is imaginary since it is enmeshed with power and knowledge. Human beings recognize themselves as subjects with specific experiences through truth-games. For Foucault's anti-naturalism the self is not given to us and there is no truth about nature, desire and the body. Since things are "held together more by contingencies than by necessities, more by the arbitrary than by the obvious, more by complex but transitory historical contingency than by inevitable anthropological constraints"[51] and the idea of "universal necessities in human existence" is unacceptable,[52] it is possible to conclude that the subject "is not a substance; it is a form and this form is not above all or always identical to itself."[53] According to Foucault, whenever one is involved in a particular activity, e.g., political, sexual, etc., one creates different relations with

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Foucault's claim that the Platonic idea of knowing oneself is ontological and not psychological because one is not examining one's conscience, actions and ideas, is untenable. Similarly, Foucault's contention that psychoanalysis is continuous with Christian thought is also problematic since, as he has argued (Foucault, "Final Interview," *op. cit.*), one of the characteristics of the Christian theme of the care for the self is that it is based on the salvation of the self through renunciation and sacrifice. These masochistic features can hardly be considered part of the psychoanalytic ideal of the self. Sloterdijk has argued that there is an affinity between psychoanalysis and cynicism, which further undermines Foucault's contention regarding the continuity between psychoanalysis and Christianity. See Peter Sloterdijk, *Critique of Cynical Reason* (Minneapolis: University of Minnesota Press, 1987).

48. Foucault, "Final Interview," *op. cit.*, p. 5.

49. Julia Annas, *An Introduction to Plato's Republic* (Oxford: Oxford University Press, 1981), p. 316.

50. Foucault, "On the Genealogy of Ethics," *op. cit.*, p. 237.

51. Foucault, "Is it Really Important to Think?," *op. cit.*, p. 35.

52. Foucault, "Truth, Power, Self," *op. cit.*, p. 11.

53. Foucault, "The Ethic of Care for the Self as a Practice of Freedom." *op. cit.*, p. 121.

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oneself, i.e., each activity constitutes a different kind of subject.

These claims are problematic. First, they clash with traditions purportedly affiliated with Foucault's thought — traditions with elaborate understandings of the self based on some account of psychological activity and its role in determining human action. Secondly, it is difficult to accept the notion of proliferating subjects whenever one is involved in different activities. There have been various attempts to conceptualize a relatively unified self — a self consisting of relatively unified subsystems.[54] Furthermore, it is not clear why an acceptance of historical contingency in the constitution of subjectivity implies Foucault's "empty" subject. It is still possible to investigate human subjectivity without having to postulate any essence determined by universal constraints.

This raises one of the most serious problems in Foucault's ethics, i.e., the lack of a satisfactory concept of the self required for the construction of a coherent and substantial ethics able to ground socio-political concerns. If one is to provide a moral account, it should spell out what actions will lead to the desirable states it defines, e.g., reciprocal relations. This, in turn, requires some account of what it means to be an agent. But nowhere does Foucault supply a theory of action and its correlate account of human psychology. As Rorty has indicated, moral theories "are psychologically and politically laden."[55] In Foucault's case, he provides a political dimension but not a psychological account because he insists that there is no truth about the body and desire. But an account which takes seriously constraints imposed by relations of domination and tries to prefigure the constitution of new subjectivities cannot refrain from postulating some notion of what a person is, even if such an account is restricted to a particular culture and age. The fact that Foucault makes reference to "rational possibilities" or postulates a practical subject which chooses appropriate actions meant to bestow upon it an aesthetic dimension reveals certain assumptions about human psychology. Talk about "rational capacities" needs to be supported with an account of psychological functions.

It is impossible to understand human action and man as a desiring animal without grounding action on some notion of thinking and rationality. Making sense of human action and its consequences implies a

54. Amelie Oksenberg Rorty, "Self-deception, Akrasia and Irrationality," in Jon Elster, ed., *The Multiple Self: Studies in Rationality and Social Change* (Cambridge: Cambridge University Press, 1987).

55. Amelie Oksenberg Rorty, *Mind in Action: Essays in the Philosophy of Mind* (Boston: Beacon Press, 1988), p. 21.

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comprehensive pattern of beliefs, desires and values which explain what we seek to understand. Without reference to such a network it is impossible to conceive the ways relations of domination curtail or frustrate desires or possible alternatives. Values enable comparison among different desires and help determining which mode of life is most preferable. Politics along Foucault's lines is an activity presupposing what Taylor has called, "the qualitative characterization of desires as higher and lower, noble and base. . . ."[56] This is a self-interpreting activity essential to human agency. Such an horizon of values, desires and beliefs allows the constitution and understanding of experience.[57]

This does not mean that the assessment of this network of beliefs, desires and values is either simple or easy. Various extraneous reasons may account for a given action — something further complicated by reasons the agent may not be aware of. As Follesdal[58] has indicated, an account that recognizes the complexity of mental phenomena and their deviant manifestations, such as repression, self-deception, etc., presupposes a wider theory of human action. These lacunae in Foucault's thought also stem from his associating psychology with the search for a deep self — a search he relates to the Christian tradition. What is absent in Foucault's work is a serious attempt to come to terms with mental phenomena because of his opposition to phenomenology,[59] and the tendency to regard them as the effects of truth games.

Another important but problematic question arises at this point concerning Foucault's notion of truth. In later studies, all the problems that beset his early work combine to the point that they ultimately constitute a break — albeit, one he does not acknowledge.[60] For example, Foucault refuses to identify knowledge and power in spite of the earlier tendency of subsuming knowledge under power or equating the two. He also maintains that the scientific validity of certain truth

56. Charles Taylor, *Human Agency and Language: Philosophical Papers 1* (Cambridge: Cambridge University Press, 1985), p. 27.

57. One cannot articulate a viable concept of the self for political philosophy, even one committed to an aesthetics of existence, without specifying the conditions for "liability and responsibility" (Rorty, *Mind in Action*, *op. cit.*, p. 1). Of course, the notion of a responsible subject cannot be accommodated by Foucault's aestheticism, yet it is unavoidable if one is to provide an account of an active human agent capable of evaluating different alternatives in relation to his overall scheme of preferences.

58. Dagfinn Follesdal, "Understanding and Rationality," in Herman Parret and Jacques Bouveresse, eds., *Meaning and Understanding* (Berlin and New York: Walter de Gruyter Verlag, 1981), p. 163.

59. Michel Foucault, *The Order of Things: An Archeology of the Human Sciences* (London: Tavistock Publications, 1970), p. xiv.

60. Dews, *op. cit.*, pp. 218-9.

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games, such as that of medical knowledge, is not at all compromised. This implies that if the validity of psychiatric knowledge can be evaluated independently of its linkage to socio-economic processes, institutions and power, then truth games can be approached differently, i.e., in epistemological terms. According to Foucault, a truth game "is an ensemble of procedures which lead to a certain result, which can be considered a function of its principles and its rules of procedures, as valid or not, as winner or loser."[61] Such rules may change, but these changes are not arbitrary. Accordingly, there should be ethics and legal rules whereby power relations would permit a minimum of domination and truth games could become more independent of power structures. This allows for the possibility of speaking the truth without being under the total control of power, and for the need to curtail the domination of power in order to speak the truth. Speaking the truth is no longer seen as necessarily allied to domination and totalizing thinking.

These remarks indicate another aspect of the shift in Foucault's thought, which refutes charges of irrationalism and manifests the realization that, as Taylor has argued,[62] if one is to remain coherent, the notion of power entails notions of "liberation" and "truth." By providing a normative perspective on certain problems, dangers and ideals, Foucault also provides an alternative truth about the world. But, and here lies another of Foucault's impasses, this requires a more comprehensive treatment of the notion of truth by dealing with other related but equally indispensable notions such as rationality, reference, meaning, mental phenomena, etc. As Putnam has shown,[63] a more comprehensive and holistic treatment of these notions is needed to defend relativism. As it stands, Foucault's account remains incomplete and unsatisfactory.[64]

Given all this, Hacking is wrong in claiming that Foucault does not have a leg to stand on,[65] and so is the frequent complaint that Foucault

61. Foucault, "The Ethic of Care for the Self as a Practice of Freedom," *op. cit.*, p. 127.
62. Taylor, *Foucault on Freedom and Truth*, *op. cit.*, p. 93.
63. Putnam, *Reason, Truth and History*, *op. cit.*
64. All this also points to the spuriousness of Foucault's distinction between the two options of "a critical philosophy presenting itself as an analytic philosophy of truth in general" and "a critical thinking that takes the form of an ontology of ourselves or an ontology of the present" (Foucault, quoted in Hoy, "Introduction," in *Foucault: A Critical Reader*, *op. cit.*, p. 22). If questions of truth cannot be divorced from a variety of other questions, such as those concerning value, meaning, reference, mental phenomena, etc. (Hilary Putnam, *Representation and Reality*, [Cambridge: MIT Press, 1988]), then the distinction between these two options is artificial.
65. Ian Hacking, Self-Improvement," in Hoy, *op. cit.*, p. 237. This is contrary to the position attributed to Foucault by Hacking, who maintains that Foucault's defence of an

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does not allow for a possible escape from a totalizing universe of domination.[66] The later Foucault attempts to plot such an escape route. Since, however, he fails to provide a convincing defence of his preferences, he also fails to overcome the limitations of his own thought. Critics of the early Foucault have repeatedly pointed out his inability to provide any satisfactory account of resistance. His later writings remain stuck with the same problem. Notwithstanding his attempt to conceive an ethical framework to create the possibility of conceptualizing life styles divorced from authoritarian systems and disciplinary structures, his account fails to provide the conceptual tools to realize this objective.

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aesthetics of existence is not made in support of aestheticism but is a suggestion "for separating our ethics, our lives, from our science, our knowledge. At present rhetoric about the good life is almost always based on some claim to know the truth about desire, about vitamins, about humanity or society. But there are no such truths to know." These claims are difficult to defend in the face of Foucault's insistence that ethics cannot be separated from discourses of truth, power and knowledge. Furthermore, Foucault does not appear to be an epistemological nihilist since his own discourse, which is also a discourse of power, postulates its own truths about the way the world is while it also allows for the presence of truth games. But then it is hardly possible that one can have the normative concerns that Foucault has without raising problems concerning the notion of truth.

66. Wolin, *op. cit.*, p. 86.

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Lyotard's Combative Theory of Discourse

Alexander Weber

"*Parler, c'est agir*" is an old rhetorical commonplace.[1] Speech is generally regarded as an instrument of communication and understanding. Lyotard, however, wants to replace communication with *agon*; to him speech is a contest: "*parler est combattre*."[2] He emphatically rejects the humanist notion that language is in a state of harmony disrupted only by the speakers' opposing interests. For Lyotard, the idea that individuals control language is an anthropocentric illusion. The internal structure of language necessarily places it in a condition of *bellum omnium contra omnes*.

Lyotard finds this civil war in the heterogeneity of language. According to him, all phrases are formed according to certain rules — "*régimes de phrases*" (to reason, to know, to describe, to narrate, to ask etc.). Phrases pertaining to different "*régimes de phrases*" are incompatible. They can, however, be linked by different "*genres de discours*" so as to reach particular aims such as to know, to teach, to maintain, to mislead or to justify. The genres of discourse are heteromorphic and are not covered by a universal metadiscourse. (Although Lyotard is a keen defender of "innovative" contradictions and paralogisms,[3] he repeatedly attempts to show that a metadiscourse is untenable because logically contradictory). Any idiom which strives to step out of the insular genres of discourse is an attempt at fraudulent inclusiveness: it is an act of terrorism, because it

1. See Wilfried Barner, *Barockrhetorik. Untersuchungen zu ihren geschichtlichen Grundlagen* (Tübingen: M. Niemeyer Verlag, 1970), p. 89.
2. Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. by Geoff Bennington and Brian Massumi (Minneapolis: University of Minnesota Press, 1984), p. 10.
3. *Ibid.*, pp. 60-61.

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suppresses the irreducible plurality of genres of discourse. The principle of universal rationality is an instrument of repression. There can be no "final grounding" of philosophy because all genres of discourse can claim equal legitimacy. Hence, any distinction between ideology and critical reflection is impossible. In view of the equal validity of conflicting claims, there remains only self-conscious equivocation.

The problem is that the heterogeneous genres of discourse mutually hinder their development. This premise is crucial for Lyotard's theory of combat: he postulates that there is a necessary superfluity of genres which is suppressed by the limited number of idioms that can survive. Whenever we utter a phrase there are always more phrases which demand to be connected to it than there are available possibilities of linkage. The process of linking phrases is never interrupted (Lyotard even defines keeping quiet as a phrase); phrases *must* be linked, but no rule determines *how* phrases should be linked. Consequently, a structural conflict between the innumerable heteromorphic phrases is unavoidable. The context in which the winning phrase proves stronger is merely contingent. The same phrase might well lose if it occurred in another idiom; it can be both strong and weak if it occurs in two different genres.[4] (The Sophists were therefore right to maintain that they can make the stronger argument the weaker). Phrases could only be strong or weak in themselves if language were a unified whole. Only if this false premise were granted would the agonistic process of selection be teleological. Each genre has its own aim, but there is no universal *telos* which would link all genres of discourse to an organic unity. These are like monads which know only their own destination; and as these destinations differ, language is in a condition of permanent civil war.

Lyotard works from another important premise. He states that genres of discourse are heterogeneous, but does not really prove it; the same problem occurs when he postulates that the phrases which demand to be linked vary. How is this variation initiated? Why are the genres heterogeneous? If these premises cannot be borne out, Lyotard's central theory of combat between genres, in its acute agonistic form, collapses. And there do seem to be reasons why this heterogeneity and variability cannot be linguistically expressed at all. The difficulty is that one can only perceive the harmless kind of conflict Lyotard calls "*litige*." In this case, it is possible to find an idiom which can solve the conflict because it covers both parties and provides a "*régle de jugement*." A "*différend*," by

4. See Jean-François Lyotard, *The differend: Phrases in Dispute*, trans. by Georges Van Den Abbeele (Minneapolis: University of Minnesota Press, 1988).

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contrast, is a conflict which for structural reasons cannot be resolved equitably; in this case, there is no idiom applicable to both parties. Only force decides which genre of discourse comes out on top. The stronger genre suppresses all possible variants pertaining to another genre; these become victims unable to express the violence ("tort") they have suffered. Should they find an idiom to voice this violence, the conflict ceases to be what it was: a "*différend*." It is fundamental that only one aspect of a "*différend*" — the self-contained, successful idiom — can be perceived. The variants remain beneath the surface, and hence cannot be expressed, or even proved to exist, without coercing and forcibly reducing the "*différend*" to a "*litige*." The heterogeneity of language, the most important premise of the "*différend*," can therefore not be established. Lyotard makes two assertions about suppressed varying phrases which both claim to be valid even though they are contradictory: 1) we cannot have knowledge of suppressed variants; 2) we have knowledge of suppressed variants because we know that they exist. A linguistic analysis of the "*différend*" being impossible, Lyotard proposes another epistemological approach: feeling. According to him only feeling can perceive the mass of suppressed phrases. But the problem of how to *speak* about a "*différend*," without neutralizing it, remains unsolved.

How can we describe a "*différend*" at all? Lyotard claims that, because he deals with phrases, his approach is metalinguistic in a linguistic rather than a logical sense.[5] It is not quite clear how this approach can ever lead to any description of a "*différend*," without implicitly subscribing to the possibility of a metadiscourse. Simplifying this somewhat, one could say: if language were in the condition Lyotard claims, he could never have written a book like *Le différend* without doing it violence. How can Lyotard speak in the sense of a linguist if his description of language is true? Linguistics is nothing if not speaking about language and hence must be affected by the relativity of idioms. Yet Lyotard's theory of "*différend*" wants to be more than one among an unlimited number of possible ways of speaking about language. If it is hard to describe the radical heterogeneity of language, it is made no easier by the authority Lyotard must claim for his absolute description.

We can see how distorted Lyotard's agonistic concept of language is if we examine his interpretation of Wittgenstein's language games. In *Le différend* Lyotard emphasizes not rule-following, but solely the aspect of winning or losing. (Like most post-structuralists, he views the playing subjects as mere epiphenomena of a spontaneous language). He

5. *Ibid.*, p. 12.

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uses the term "game" as a near-synonym for competition or rivalry. Wittgenstein, in contrast, states: ". . . is there always winning and losing, or competition between players? Think of patience. In ball games there is winning and losing; but when a child throws his ball at the wall and catches it again, this feature has disappeared."[6] Lyotard stresses that language games are incommensurable and that they fail to translate, whereas Wittgenstein is interested in both the alteration *and* the continuity of language games. "A main source of our failure to understand is that we do not *command a comprehensive view* of the use of our words. Our grammar is lacking in this sort of comprehensiveness. A comprehensive view produces just that understanding which consists in 'seeing connexions'. Hence the importance of finding and inventing *intermediate cases*. The concept of a perspicuous representation is of fundamental significance for us. It determines the form of account we give, the way we look at things."[7] This is not to find fault with Lyotard's interpretation of Wittgenstein. The question is whether we should prefer his tendentious interpretation to Wittgenstein himself. There are two important assumptions in Lyotard's interpretation of language games: the heterogeneity of the different genres of discourse and the rivalry between them. As we have seen, however, he is unable to prove these assumptions.

Lyotard shares this problem with some of his 19th century precursors. It is illuminating to establish the genealogy of his combative style and theory. Lyotard is aware of part of this agonistic tradition. He alludes explicitly to Nietzsche's essay, "Homer's Contest,"[8] in *The Postmodern Condition*.[9] Nietzsche attributes the triumph of Greece to the presence of competition at every level of political and cultural life. The *agon* is motivated by an aversion to undivided sovereignty and centralized power. A second strong man is promoted to counter the overarching ambition of the tyrant. To combat the conservatism and paralysis of absolutism, Lyotard and Nietzsche favor a decentralized dynamic of power. "That is the kernel of the Hellenic concept of *agon*: it abominates autocracy, and fears its dangers; as a *safeguard* against genius it calls for — a second genius."[10]

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6. Ludwig Wittgenstein, *Philosophical Investigations*, trans. by G.E.M. Anscombe (Oxford: Blackwell, 1958), p. 32e (translation modified).

7. *Ibid*, p. 49e.

8. Friedrich Nietzsche, "Homer's Contest. Preface to an Unwritten Book," in *Early Greek Philosophy and Other Essays*, trans. by Maximilian A. Mügge (London: Allen & Unwin, 1911), pp. 49-62.

9. Lyotard, *The Postmodern Condition*, *op. cit.*, p. 10.

10. Nietzsche ("Homer's Contest," trans. by Maximilian A. Mügge in *Complete Works*, Vol. 2 [London: T.N. Fowlis, 1911]), quoted in Lyotard, *The Postmodern Condition*, *op. cit.*

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Nietzsche, however, is only one of many 19th century philosophers who follow the agonistic paradigm. His theory of combat is not too original.

The 19th century is dominated by different types of agonistic theory, such as Malthus' principle of population, Spencer's evolutionism, Marx' class struggle, Darwin's natural selection, Nietzsche's perspectivism and Social Darwinism. This line of competitive theory was initiated by Malthus. He maintained: "First, That food is necessary to the existence of man. Secondly, That the passion between the sexes is necessary, and will remain nearly in its present state. These two laws ever since we have had any knowledge of mankind, appear to have been fixed laws of our nature . . . . Assuming then, my postulata as granted, I say that the power of population is indefinitely greater than the power in the earth to produce subsistence for man. Population, when unchecked, increases in a geometrical ratio. Subsistence increases only in an arithmetical ratio."[11]

The influence of this "principle" on the 19th century cannot be overestimated. From these premises it follows that there is always an excess population which cannot survive because nature cannot feed it. Hence there are structural reasons why rivalry and combat in nature and in human society are inevitable. Too many guests must fight for a limited number of seats at the table of life.

Later, Spencer concluded that the better and stronger pass this selection whereas the weak and inferior perish. According to his evolutionism, the mechanism of competitive selection leads to social and cultural progress. Therefore, only politically underdeveloped societies are ruled by absolute power. Subsequently, societies must initiate a competitive "survival of the fittest" in order to succeed. Governmental interference hinders progress; conscious "*laissez-faire*" allows a strong competitive evolution.

Both Malthus and Spencer were interested primarily in human society; it was Darwin who applied their theories to nature. He explained the evolution of species by combining Malthus' theory of selection with his scientific observation of modified descent. In contrast to the evolutionist Spencer, Darwin is a pure selectionist. Nature has no *telos*; since strength or weakness are dependent on accidental circumstance, we lack a criterion for progress.

Ernst Haeckel and the Social Darwinists — Alfred Ploetz, Ludwig Gumplowicz, Wilhelm Schallmayer, Alexander Tille and others — in

11. Thomas Robert Malthus, *First Essay on Population 1798* (London: Macmillan, 1966), pp. 11-14.

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turn applied Darwin's agonistic theory to society and culture.[12] Thanks to Darwin, competitive selection had come to be regarded as unassailable scientific knowledge. In order to understand the rise of Social Darwinism it is crucial to follow how the paradigm of competitive selection is transposed from society to nature and then back to society. Two positions emerge from the reception of Darwin. One school maintained that the sciences should be used as an instrument in order to change the world. Most scholars, from Engels to Bebel, who pleaded for this position were evolutionists and saw social conflict as teleological. On the other hand, Social Darwinists like Tille, Ploetz and de Lapouge, were pure selectionists who denied a *telos*, and held that, for structural reasons, similar conflicts would be perpetuated infinitely. They declared that science should only create the conditions for an *agon*, but must not interfere in it. Schallmayer demanded: "All cultural achievements, all social institutions, the law and customs of sexuality (including the composition of the family), the ordering of property and the economy, political organizations, religious institutions, the quality of ethical and scientific education, the development of technology, the administration of justice etc., must be viewed as equipment for the life-struggle."[13] Lyotard's position is similar; he wants to tear down all barriers which hinder the struggle between genres of discourse. All attempts at outside intervention in the structurally inevitable conflict are forbidden. Like most Social Darwinists, Lyotard is a pure selectionist. (The "*différend*" is undirected because language is not a homogeneous organism which follows a single *telos*.) Hence Lyotard has to face the

12. My outline of the development of Social Darwinism is based on the following literature: Günter Altner, ed., *Der Darwinismus. Die Geschichte einer Theorie* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1981). Peter J. Bowler, "Malthus, Darwin, and the Concept of Struggle," *Journal of the History of Ideas*, Vol. 37 (1976), pp. 631-50. Hedwig Conrad Martius, *Utopien der Menschenzüchtung. Der Sozialdarwinismus und seine Folgen* (Munich: Kosel Verlag, 1955). Yvette Conry, *L'introduction du Darwinisme en France au XIXe siècle* (Paris: J. Vrin, 1974). Gertrude Himmelfarb, *Victorian Minds* (New York: Knopf, 1968), pp. 314-32. Hannsjoachim W. Koch, *Der Sozialdarwinismus. Seine Genese und sein Einfluß auf das imperialistische Denken* (Munich: Beck Verlag, 1973). Georg Lukács, *The Destruction of Reason*, trans. by Peter Palmer (London: Merlin, 1980). Günter Mann, ed., *Biologismus im 19. Jahrhundert* (Stuttgart: Enke, 1973). James Allen Rogers, "Darwinism and Social Darwinism," *Journal of the History of Ideas*, Vo. 33 (1972), pp. 265-80. Michael Ruse, "Social Darwinism: The Two Sources," *Rivista di Filosofia*, Vol. 73 (1982), pp. 36-52. Hans Günter Zmarzlik, "Der Sozialdarwinismus in Deutschland als geschichtliches Problem," *Vierteljahreshefte für Zeitgeschichte*, Vol. 11 (1963), pp. 246-73.

13. Wilhelm Schallmayer, "Traditionswerte. Übertragung des Selektionsgedankens auf nicht vererbbare und nur traditionsfähige Errungenschaften," *Der Darwinismus*, ed. G. Altner, p. 110 (English translation from German original by A. Weber and M. Pedroz).

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same problem as the selectionists. They were able to describe the mechanism of selection very well, but could never explain why variations occur at all — a decisive weakness which Darwin himself openly acknowledged. The evolutionists, in contrast, could provide a teleological vindication for variability, because they attributed ends to natural selection. As we saw above, Lyotard cannot demonstrate the multiformity and variability of language. It is symptomatic that he must confess in *The Postmodern Condition* that one can only marvel at the diversity of narrative and of scientific knowledge, as at the diversity of plants or animals.[14]

Lyotard shares other important assumptions with the Social Darwinists. Superfluity and variability cause an agonistic selection which allows only a few strong variants to survive and suppresses a great number of weaker ones. Both Lyotard and the Social Darwinists take the same attitude of neutrality towards conflicts, which can be observed and analysed, at best promoted, but in no circumstances evaluated or interfered in. Criticism is ruled out because any tenable position must itself have been won in struggle and can command only limited assent as it is always, quite literally, open to attack.

Apart from these general parallels, it is striking that the Social Darwinists even anticipated Lyotard's concept of language. The principle of *agon* is extended to all cultural phenomena. It is important to see that cultural rivalry does not depend only on the physiological struggle for life of its combatants. There are combats within culture itself which are not controlled by individuals. Some 19th century linguists tried to apply Darwinism to language.[15] This school saw language as consisting of dissimilar spontaneous organisms which compete with each other. Darmesteter, for example, stated that there is a "*concurrence vitale*" between the words of a language,[16] and Schleicher compared the pedigree of the Indo-European languages to that of animals and plants.[17] He concluded that, in language as in nature, there is a struggle for life between different species, some of which decline while others flourish. This school of linguists also found it very hard to give reasons for the heterogeneity and competitive structure of language. They put forward the thesis that

14. Lyotard, *The Postmodern Condition*, *op. cit.*, p. 26.

15. Very little has been written on this school of linguistics. The best introduction is Yvette Conry, *L'introduction du Darwinisme en France*, *op. cit.*, pp. 91-107.

16. Arsène Darmesteter, *La vie des mots étudiée dans leurs significations* (Paris: Delagrave, 1889), pp. 134ff.

17. August Schleicher, "The Darwinian Theory and the Science of Language," in *Linguistics and Evolutionary Theory: Three Essays*, trans. by Alex V.W. Bikkers, ed. by Konrad Koerner (Philadelphia: John Benjamins Publishing Co., 1983), pp. 1-69.

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the history of language was initiated by a great number of ambitious and antagonistic primitive languages. This thesis was also used to strengthen polygenesis in anthropology. The Social Darwinists believed that mankind is not descended from a single primitive race (or one couple as in biblical history) but from several conflicting races. Ludwig Gumplowicz stated: "Today polygenesis is regarded as less controversial in linguistics than its counterpart, polygenesis in anthropology."[18] In an interesting chapter on the multiple origins of primitive languages and cults, Gumplowicz comes to the following conclusion: "We have shown that in all likelihood mankind is descended from countless primitive tribes, and that as a result of increasing commerce and intercourse of a largely inimical and mutually exploitative character, more and more tribes are forced out of the arena, which they did not have the strength to defend, while others expand and maintain their hold on the blood-drenched earthly battlefield. Languages present us with an analogous drama. Men start to express their ideas in countless primitive languages. With increasing commerce and intercourse some languages disappear without a trace or are written off as 'dead,' while others survive and expand their territory ever wider and achieve ever greater power."[19] This struggle is not limited to the interrelation among different languages. The conflict is no less prevalent within individual languages. "As seen by linguists, the events which take place for men on the historical stage at large, and obtrusively determine the relation between languages are enacted within the microcosm of every single language. Each primitive language is a struggle for life among roots and forms. Most are defeated, while the survivors grow stronger in spirit and meaning."[20]

The terminology may be outmoded, but Lyotard's theory of "*parler est combattre*" is here in all its essentials.[21] Schleicher stated that language consists of living organisms which are autonomous. There is in Lyotard's writings a similar tendency to give language an ontological status. Welsch has recently deplored this tendency and criticized Lyotard for regarding even a shower of rain as a linguistic

18. Ludwig Gumplowicz, *Der Rassenkampf. Soziologische Untersuchungen* (Innsbruck: Wagner'sche Universität, 1883), p. 87f.

19. *Ibid.*, p. 136.

20. *Ibid.*

21. Nietzsche chooses a similar decentralized viewpoint: "Even in the domain of the inorganic an atom of force is concerned only with its neighborhood: distant forces balance one another. Here is the kernel of the perspective view and why a living creature is 'egocentric' through and through." Nietzsche, *The Will to Power*, trans. by Walter Kaufmann and R.J. Hollingdale (New York: Vintage Books, 1968), p. 340.

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phenomenon.[22] Just as Lyotard applies linguistic attributes to nature, linguists influenced by Darwin described language in terms of nature. Schleicher grounds this explicitly in a monism which treats thought and matter as a unity.[23] Darmesteter, Haeckel and most Social Darwinists used monism in order to justify their applying natural selection to society, culture and language. Lyotard's position might also be called monistic. In contrast to the Social Darwinists, he starts with linguistics: the nameless conflicting forces which work through language shape the world as a whole. But, for both, the concept of language as a medium for reflection and communication between individuals is exposed as an anthropocentric fiction, while the self is seen as an epiphenomenon. Language should be dehumanized. The self is governed by the presiding principle of struggle, to which it also owes everything which in its vanity it believes that it creates. Man is convicted of a hubristic belief that nature and language are at his service, dethroned from the summit of creation, and for his law is substituted the eternal law of the *agon* which demotes him to what Tille calls "*eine Welle im Daseinsstrom*," a ripple in the current of being.

Lyotard, Nietzsche and the Social Darwinists try to escape a cultural situation they regard as decadent by affirming life as struggle. Man must be liberated from the chains of the old order — Christianity, humanism, enlightenment rationality — which restrain the agonistic imperative. (Without war the world stagnates; on this Lyotard and his predecessors agree.) Even the memory of such obsolete faiths should be eradicated and a new skepticism cultivated. Paganism is lauded in ardent tones. The old narratives, "*grands récits*" like the biblical genesis, have to be deconstructed: Haeckel wrote an alternative natural history of creation in which the omnipotent creator is replaced by anonymous forces of nature.[24]

Legitimacy in state, the sciences and law, can be attached only to what promotes unrestricted dissension. For Lyotard, prevailing "narratives" like Christianity or the enlightenment myth of the emancipation of mankind have lost all power to legislate; such "*grands récits*" disintegrate into descriptive, prescriptive, denotative, narrative and other elements which issue an immediate declaration of war. Consensus cannot provide legitimacy because it violates the diversity of genres of discourse.

22. Wolfgang Welsch, *Unsere postmoderne Moderne* (Weinheim: Acta Humaniora, 1987), p. 253; see Lyotard, *Le différend*, *op. cit.*, p. 203.
23. August Schleicher, "The Darwinian Theory," *op. cit.*, pp. 20-21.
24. Ernst Haeckel, *Natürliche Schöpfungsgeschichte* (Berlin: G. Reimer, 1902).

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In the post-modern condition, radical dissension and paralogism are the only legitimate maneuvers: i.e., in the academy, those moves which most successfully subvert the hegemony of the experts. They respond by ignoring the threat of innovation. Consensus forms a bulwark of the weak majority in the defense of their institutional hierarchy against the strength of minority assault.

We now can clarify to which agonistic tradition Lyotard adheres. He explicitly criticizes the Marxist class struggle, the most important 19th century theory of conflict, because it subscribes to the enlightenment myth of emancipation. In its speculative discourse it postulates one unified human subject — which both Lyotard and Social Darwinists like Gumplowicz think impossible.[25] Furthermore, in Marxism the struggle has a historical *telos*, it is not necessarily perpetuated infinitely. This was also the position of the evolutionist interpreters of Darwin. They — as much as the Marxists — insisted that philosophers must not only interpret the world but change it. The right-wing interpreters of Darwin, in contrast, maintained that the life-struggle never reaches conclusion and that any intervention in the mechanism of selection is pernicious. The post-modern "anything goes" becomes a re-encounter with the Social Darwinists' "*laissez faire*." The Social Darwinists found themselves in a compromising dialectic of liberalism and coercion when they sought to establish the social conditions for unrestricted competition. The post-modernist repudiation of all limitation, even the accepted limits of argument, can take the open road to totalitarianism; Lyotard's equality of all discourses, whether rational or racist, cannot be politically institutionalized without transformation into terror. A philosophy whose sincere aim is to combat terror would then have failed.

25. See Ludwig Gumplowicz, *Grundriß der Soziologie* (Vienna: Manzsche k.u.k. Hof-Verlags-u. Universitäts-Buchhandlung, 1885), p. 217: "Whatever we have learned about social development has invariably been partial, local and transient; we have already stated that if we have no concept of the development of mankind as a unified whole it is because we cannot have a coherent and complete notion of its subject."

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The Uses of Error: The Collapse of "Really Existing Socialism"

Keith Tester

The collapse of East European socialist states is related to the tragic metamorphosis of post-Enlightenment thought. A particular strand of Marx's and Engels' thought, and Lenin's modification thereof, has provided a justification for the projects initiated by East European states and explains their ultimate downfall. There is a link between Marx and Engels, Lenin and Stalin. Marx and Engels thought they had scientifically discovered the secret of history — a belief Lenin turned into a new historical practice, after adding a few crucial modifications. Stalin *did* legitimate his policies by appealing to authoritative texts. Soviet-style states were founded on the assumption that they were the absolutely correct, self-conscious subjects of history. The success of this myth prefigured the rupture between the state and "the people" and ultimately led to the events of 1989.

The Enlightenment was neither a single nor a homogeneous movement. As Berlin has shown, it involved a fundamental disenchantment and a declaration of human autonomy.[1] The Enlightenment, for Berlin, involved struggle, but only insofar as the philosophers' ideas triggered repressive measures on the part of the church and the monarchy to maintain their institutional power. Yet the Enlightenment was not merely a struggle against church and state, nor just an intellectual event. It was also a complex social relation. The promises and problems in the difficult career of the Enlightenment throw light on East European events.

Many of the complex relations implicit in the Enlightenment project

1. Isaiah Berlin, *Against the Current. Essays in the History of Ideas* (Oxford: Oxford University Press, 1981), p. 1.

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can be found already in Kant's paradigmatic text, "What is Enlightenment?" The famous first paragraph, where Kant announces that "Enlightenment is man's emergence from his self-incurred immaturity,"[2] fits neatly with Berlin's characterization. Kant did announce that enlightenment is freedom. However, as the text proceeds, he becomes ambivalent. If enlightenment is emergence from the *self-incurred* reign of superstition, the crucial project of disenchantment is carried out by specific social groups or individuals against the resistance of other groups or individuals. Kant posits the rule of reason as an abstract set of ideas but, more importantly, he is positing the rule of the *reasonable* as a distinct social group. His enlightenment contains two interrelated disciplinary techniques mobilized by the prestigious social groups containing people like Kant: education (to make the people reasonable) and government (to make sure that reason is used properly).[3]

Kant's essay also articulates a temporal dimension. Enlightenment is a socio-historical process: "If it is now asked whether we at present live in an *enlightened* age, the answer is: no, but we do live in an age of enlightenment."[4] The social is identified as something with a past of superstition, a present of enlightenment, and an enlightened future. But progress would have to be guaranteed. Since the shackles and certainties of God had been removed from the understanding of social relations, the latter would become difficult, even unmanageable. As such, knowledge becomes inextricably bound with projects of social and cognitive control. The recognition that the social obeys no laws other than its own was the basis of a post-Enlightenment urge to seek some truth, and the avoidance of a potential existential abyss within the historical flux.

After Kant (and, of course, Hegel), Marx came to identify determinate evolutionary and developmental laws in the progress of social relations; he saw the foundation of those laws in rationally intelligible social formations. His point was that, if history is an intelligible process, and if human beings are reasonable, then it is possible for the most reasonable social individuals and classes to unravel the secrets of history. In other words, the death of God did not necessarily entail the death of faith.

For Marx and Engels, the self-proclaimed true knowledge of history is the guarantee for a practical freedom in the future. True knowledge

2. Immanuel Kant, "An Answer to the Question: 'What is Enlightenment?'" in H. Reiss, ed., *Kant's Political Writings* (Cambridge: Cambridge University Press, 1970).

3. The combination of education and government has also been spotted by John Rundell in his *Origins of Modernity. The Origins of Modern Social Theory from Kant to Hegel to Marx* (Oxford: Polity, 1987), p. 15.

4. Kant, "What is Enlightenment?" *op. cit.*, p. 58.

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(i.e., that all previous history is the history of class struggle) is also *right* in both the ethical and rational senses. Marx and Engels were postulating the ability and obligation of reason and rational knowledge to replace God as the representative of truth, wisdom, and the future. This position was not exceptional. As Kant pointed out, the rule of knowledge and, of course, the knowledgeable, is a fundamental feature of the European Enlightenment. Although Marx and Engels did not personalize the possession of this knowledge, they thought the Communist Party, as the organization of the leading sections of the proletariat, was the subjective agent able to guarantee that progress would not be halted by the self-serving bourgeoisie. The Communists push "forward all others," and, "have over the great mass of the proletariat the advantage of clearly understanding the line of march, the conditions, and the ultimate general results of the proletarian movement."[5] Thus, the Communist movement is indistinguishable from the movement of history.

Marx and Engels rejected Kant's claim that the knowledgeable are intrinsically superior to all others. Implicit in the *Communist Manifesto* is the idea that the truth of history could only be unravelled because history had reached a stage where absolute knowledge was possible. According to Marx and Engels, history is like a perfectly synchronized phalanx where the historical movement, political movement and knowledge all feed off and provide the measure, constituency, and proof of the other. Consequently, although they were certain that they possessed an original insight into the social mechanisms of the world and were deeply involved in politics, they were happy to sit back and let the transformation of the world be carried out by the class endowed with the historical destiny to achieve that revolutionary mission. In the words of the provisional rules of the Working Men's International Association (1864), "the emancipation of the working classes must be conquered by the working classes themselves."[6]

Marx and Engels were working within the context of the Enlightenment, but they were perfectly content to define themselves as foot soldiers in the synchronized advance of history. Because they knew the truth of history, and believed that they were witnessing its apotheosis, they uncritically accepted a connection between historical and political movement, and the knowledge of it. Here is where Lenin becomes an

5. Karl Marx and Frederick Engels, "Manifesto of the Communist Party," in Karl Marx, *Selected Works in Two Volumes*, Vol. 1 (London: Lawrence & Wishart, 1942), p. 219.

6. Karl Marx, "Address and Provisional Rules of the Working Men's International Association," in Karl Marx, *Selected Works in Two Volumes*, *op. cit.*, Vol. 2, p. 442.

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important figure and an analysis of his thought helps explain why Soviet-type "really existing socialism" took the disastrous form it did.

Lenin faced a dilemma. He did not doubt Marxism, but he also wanted to carry out the communist revolution in Tsarist Russia. Unfortunately, according to Marx and Engels, the Russian Empire was not ready for such an event. They saw history as a definite progress from one mode of production to another. According to this logic, communism could only come into being after the bourgeois revolution. But Russia had only experienced a questionable bourgeois revolution, and was still characterized by a massive peasantry. In the preface to the 1882 Russian edition of the *Communist Manifesto*, Marx and Engels articulated the doubts which later confronted Lenin. They asked whether the peasantry could pass directly to communist relations of common ownership, or whether it "must first pass through the same process of dissolution such as constitutes the historical evolution of the West."[7]

Lenin skillfully dealt with this difficulty by severing the connections between the historical and the political movement. If Marxism explained historical development, it was obvious that at some point in the future Russia would be ripe for the proletarian revolution. If it was possible to form an organization aware of the truth generated in the capitalist centers, and to keep this truth free from incorrect interpretations by "backward elements," then it would also be possible to speed up the course of history. If history was intelligible and driven by social relations, it should not be too difficult to deliberately manipulate these social relations so as to bring about the future sooner. Moreover, since the communist future would benefit everyone except the exploiters, any suffering incurred during this acceleration was absolutely warranted.

The Leninist position that social relations should be *made* to conform with the knowledge of what they should be like had a number of crucial consequences which created a distance between Marx and Engels and the activities subsequently carried out under their banner. According to them, historical progress could safely be left to that social class which experienced the force of history most sharply — the proletariat. The implication for intellectuals was that they could speak *with*, but never *for*, the proletariat and history.

Lenin could not wait. The truth of the proletarian revolution could not be contained within Russian history. It had to be located elsewhere.

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7. Karl Marx and Frederick Engels, "Manifesto of the Communist Party" (Preface to the Russian Edition of 1882) in Karl Marx, *Selected Works in Two Volumes*, *op. cit.*, Vol. 1, p. 192.

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For Lenin, the truth of history, and thus the direction for the political movement which is before its time, was in Marx' and Engels' texts. These texts know history better than the historical participants themselves. Thus the authority of those texts had to be asserted and defended. Since these texts had been written in Western Europe, by using them as the model for Russian modernization Lenin placed himself in the tradition of Europeanization initiated by Peter the Great. The truth of the future is now in the text rather than in daily struggle. Indeed, the experience of struggle is denigrated to a level completely subordinate to textual hermeneutics: "the role of vanguard fighter can be fulfilled only by a Party that is guided by the most advanced theory."[8]

The Russian population was not ready to carry out its historical task — a task already known to the bearers of correct knowledge. It was relatively easy to go from that assumption to the notion that the historical movement could only be guaranteed by the knowledgeable. Lenin returned to the Enlightenment perspective that Marx and Engels had managed to out-maneuver. Thus for Lenin, those in the know have a special claim to rule and shape the world. For both Lenin and Kant, but not for Marx and Engels (who trusted the working class), only the intellectuals can reveal the true ways of the world. Consequently, Lenin fought hard to establish a Party organization which would be the guardian and the subject of history.

Within the Leninist scheme, the working class never measures up to the Party's criteria of what it should be, and it was even incapable of liberating itself without the help of Lenin and the other heirs of Kant: "[T]he working class, exclusively by its own effort, is able to develop trade-union consciousness. . . . The doctrine of socialism, however, grew out of the philosophic, historical and economic theories elaborated by educated representatives of the propertied classes, by intellectuals."[9] Lenin was prepared to do something "in the concrete situation" of Tsarist Russia that Marx would never have countenanced: make the revolution on *behalf* of the proletariat and, if necessary, *despite* it. As Lukács says of the Leninist system, it is, "a life-and-death question for the proletariat to have the thought and actions which *truly* correspond to its class position clearly *in front of it*."[10] The truth is in front of it

8. V.I. Lenin, *What Is To Be Done? Burning Questions of Our Movement* (Peking: Foreign Languages Press, 1973), p. 30.

9. *Ibid.*, p. 38.

10. Georg Lukács, *Lenin. A Study on the Unity of his Thought* (London: New Left Books, 1970), p. 29 (italics added).

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and not within it, as Marx asserted. Lenin always spoke *for* the people, never *with* them. Indeed, the proletariat rarely enters into Lenin's work except as a ritual incantation or a strategic problem. It is not at the heart of the truth, as for Marx and Engels. Only what the Party said and did on the basis of its authorized interpretation of true texts was by definition correct.

The Leninist identification of the Party as the site of all historical certainty meant that great caution had to be taken to ensure that its purity would never be in doubt. Any interpretation of the texts not reconcilable with the Party's authoritative readings would have to be mercilessly crushed. More importantly, the Party could never become too close to the proletariat or the peasantry. Any intimacy would pull the Party back to earlier idiocies — a threat which could only be countered by the vigilant defence of its *leading* role. The people, who from the Party's viewpoint were always at an earlier stage of chronological historical development, could only be backward. The Party had the historical duty to go among the people, but it was careful to ensure that the opportunist, terrorist, and economistic masses did not go among it. The tragedy of the Leninist system is that the putative beneficiaries of the movement of history are never quite able to carry out the movement themselves. The connections between historical agents and historical movements Marx and Engels so brilliantly elaborated were repudiated by Lenin.

Lenin emphasized this lack of faith in people, especially the peasantry, from his days as a propagandist up to his death. In 1902, he was stating that, "the spontaneous struggle of the proletariat will not become its genuine 'class struggle' until the struggle is led by a strong organization of revolutionaries" — which suggests that the working class threatens to dissolve the struggle unless guided by the knowledgeable. As late as 1923, within the context of the New Economic Policy, Lenin criticized the Russians because they traded in an "Asiatic manner." In order "to be a good trader one must trade in the European manner. They are a whole epoch behind in that."[11] Presumably, the people were too rooted in their traditional ways, and any behavior which derives its legitimacy from the past is anathema to any struggle concerned with the future. The Russian people needed unremitting education and government.

In all these senses, Lenin is an archetypal Enlightenment intellectual. He embodied the specific dialectic of the apartness of the rational

11. Lenin, *op. cit.*, p. 167; V.I. Lenin, "On Co-Operation" in *Selected Works in Three Volumes*, Vol. 3 (Moscow: Progress Publishers, 1967), p. 761.

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Kant mobilized in "What is Enlightenment?" He pushed the post-Enlightenment obsession to find some truth in history to hitherto unsuspected limits. He placed all faith and socio-political certainty in the ability of the knowledgeable —instituted in the Party — to bring about the future. If the certainties of the future are only known by the Party, and if the rest of the social environment is considered incapable of knowing the truth (because it is not at a suitable stage of historical development), then only the Party can rule. The Party can never be wrong when it follows the correct line obtained by a correct reading of authorized texts. Once the Party becomes the government, all history ceases until the backward people catch up with it. Yet the fact that the Party continues to govern proves that the people have not caught up. In terms of this contract, they never can.

In the Leninist scheme, there can only be one criterion for the Party, i.e., its success in carrying out the revolution. Yet, if it has been successful in that, then it obviously possesses the truth about everything else, everywhere. It has accelerated history as a process leading to revolution. Precisely because it has successfully changed history, the Party is always able to exercise its rule over the never-ending present. Institutionally, Bolshevism is the end of history.

When the Leninist Party turned from revolution to government, the identification of the Party with timeless truth meant that it became the equivalent of Rousseau's "general will." "It follows . . . that the general will is always upright and always tends to the public advantage; but it does not follow that the deliberations of the people always have the same rectitude."[12] Although the revolution had been achieved, the continued existence of the peasantry, the exigencies of War Communism, and the New Economic Policy meant that the Soviet Union was still in an awkward situation. Since, however, the Bolsheviks remained true to Lenin, they knew what would ultimately be for the best: the obliteration of individual interests for the benefit of all. The Party is always right. As a theory of revolution, Leninism was the greatest expression of the power of historical movement; as a system of government, it was nothing more than arrogant stasis. Thus any policy failures were seen as the fault of the human material.

Havel's *The Memorandum* provides a good example of the eternal correctness of the Party and the consequent failures of particular individuals.

12. Jean Jacques Rousseau, in J. Hope Mason, ed., *The Indispensable Rousseau* (London: Quartet, 1979), p. 162.

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The play also indicates how people are irrelevant to the correct workings of the state. This can be seen in the debates over the introduction of the new official language for administration, Ptydepe. It is obvious to all the characters in the play that Ptydepe is unworkable, but it has been framed in line with the right principles and has been designed to encourage rationality. The language has to be taught to administrators, but by the end of the play all the pupils have dropped out and the teacher ends up teaching an empty classroom. Yet the teacher keeps going, since Ptydepe is automatically correct and therefore must be taught. The fact that there are no students merely demonstrates how far the people lag behind. When the Managing Director of the organization is unable to grasp some of the simpler rudiments of Ptydepe, the implication is clear: "one cannot avoid concluding that in your case it is not merely a matter of average inattentiveness or negligence, but of that particular inability to learn any Ptydepe whatsoever, which stems from a profound and well-disguised doubt in its very sense." By the end of the play, Ptydepe has been recognized as a failure, and its supporters eventually admit it. But the campaign to rationalize organizational communications continues under the control of the earlier supporters of Ptydepe: "Making an end of Ptydepe doesn't mean that we must automatically give up all attempts at finally introducing some precision and order into office communications. If we did, we would — so to speak — throw out the baby with the bath water."[13] The decision was right, and always will be; it is the human raw material which fails, and always will.

The play is about a circular institutional environment where all the moral individual can do to retain some shred of humanity is get out (i.e., become irrelevant from the organizational viewpoint). Although the attempt to introduce Ptydepe fails, this is not because of the original decision but of the inadequate, uneducated individuals who could only pursue their particular interests. Since the original decision was made on the basis of a knowledge of what is *truly best*, it must be tried again and again. The organizational structures remain unchanged and beyond doubt.

Havel provides an absurdist interpretation of strategies which were actually principles of government under Stalinism. Stalin never doubted that his reading of the Soviet "general will" was always correct both *pragmatically*, since he knew what had to be done, and *ethically*, since he was legitimated by a happy future. Consequently, the Stalinist failures could only be the result of misreading of the authorized texts, or attempts to

13. Vaclav Havel, *The Memorandum* (London: Eyre Methuen, 1981), pp. 40, 85.

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destroy the always correct administration. From the Stalinist viewpoint, failures could only be the people's fault who, consequently, had to be *made irrelevant* to the proper functioning of the system. As Stalin himself stated at the Seventeenth Party Congress in 1934, on the eve of the purges: "We have smashed the enemies of the Party, the opportunists of all shades, the nationalist deviators of all kinds. But remnants of their ideology still live in the minds of individual members of the Party, and not infrequently they find expression. The Party must not be regarded as something isolated from the people who surround it. It lives and works in its environment. It is not surprising that at times unhealthy moods penetrate into the Party from outside. And the ground for such moods undoubtedly exists in our country, if only for the reason that there still exist in town and country certain intermediary strata of the population who constitute a medium which breeds such moods."[14] The Party is pure, but it has to work in a polluted and polluting environment. The people — who are always potential pollutants — are inadequate and irrelevant for the tasks which history dictates must be carried out on their behalf.

By elaborating ideas Lenin had developed to speed up Russia's history, Stalin was able to simultaneously emphasize the rightness of the Party and explain pragmatic failures as the people's fault. But this technique presents a major difficulty. If the people were blamed for everything which went wrong and if they were altogether excluded, why did they continue supporting the system? And how was the Stalinist version of the Soviet state, the version which was exported throughout Eastern Europe, able to claim to speak on the people's behalf? This was done through a depiction of the people as that group which did what it was told and believed in the promises of the good tomorrow. Those who fell outside "the people" were wreckers or spies — pollutants which had to be forcibly removed from the body politic. Havel made this point during his trial in October 1979: "The system is based on an *a priori* assumption that the state can do no wrong. . . . Then anybody criticizing their actions is logically engaging in slander, vilification, and so on."[15] The state could not admit that the people did not support it, because the people did

14. Joseph Stalin, "Report to the Seventeenth Congress of the Communist Party of the Soviet Union (Bolshevik) on the Work of the Central Committee," in B. Franklin, ed., *The Essential Stalin. Major Theoretical Writings 1905-52* (London: Croom Helm, 1973), p. 275. Some of these ideas can be found in Mary Douglas, *Purity and Danger. An Analysis of the Concepts of Pollution and Taboo* (London: Routledge & Kegan Paul, 1966).

15. Vaclav Havel, quoted in Tom Stoppard's "Introduction" to *The Memorandum*, *op. cit.*, p. vi.

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so *by definition*. The only problems were caused by those who were either unprepared or unable to accept the sovereignty of Stalinist truth.

The subjects of Soviet-type states experienced all these machinations, all this apportionment of blame, which ultimately denied their ability to participate in the march to communism. The people of Soviet-type states were the subjects of a tripartite system of education and government. First, they were taught that the Party was always correct. Second, they were subjected to powerful exhortations to live up to the truth. Third, they were shown that all failings were the fault of the social *other* who was in league with capitalist and imperialist forces and did not care about the people's suffering.[16] The latter turned out to be the undoing of the Leninist-Stalinist system, which always kept a tight grip on its leadership of history.

The Party-state could not change, but it was possible for it to apportion blame by perpetually redefining the limits of social subjectivity. Those blamed once could not be blamed again, since they were purged from the polity. The fault must lay with another "backward" group. The Stalinist system was thus intractably built upon two divergent and ultimately irreconcilable foundations. Truth and the organizational structure were put at the head of serial history and simultaneously outside of chronological history, while the people were constituted and subjectively mobilized through chronological categories ("who can we blame this time?") and were never up to the demands of serial history. In Soviet-type states, the *technology of subjugation* is serial; *the experience of subjectivity*, chronological. The daily history of the individual Soviet subjects was not synchronized or even compatible with the more or less stagnant serial history of the Stalinists.

Stalinism ultimately had nobody to blame. There were no other social groups left. But, paradoxically, Stalinist states were unable to blame themselves, since to do so would cast doubt on the Enlightenment heritage, which was their reason for being. Consequently, they simply stopped blaming anyone and ossified into the bureaucratic structures of the Brezhnev period. The historical stasis, an inevitable product of the success of Leninism as a theory of revolution, eventually led to the Soviet-type system denying all movement. The problem with a rigid technology of subjectivity which maintains the purity of the ever

16. These three strands can be seen in Soviet literature of the Stalin years. For a useful discussion, see Katerina Clark, "Utopian Anthropology as a Context for Stalinist Literature" in Richard C. Tucker, ed., *Stalinism. Essays in Historical Interpretation* (New York: Norton, 1977).

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diminishing constituency of insiders but permits the destruction of those increasingly on the outside, is that it makes the people too irrelevant and too contingent. The people were a managerial problem and had to be subjected to effective surveillance, turned into the human versions of the cyphers which populate socialist realist art.

Soviet-type states could not allow for anything other than people's failures. But as crisis followed crisis, any state which accepted the Leninist equation of truth and Party could only respond by opening a gap between it and the people, whose tacit support and labor it needed. It did not need the participation of the proletariat: it just needed them to accept the exhortations to work and be quiet. Inevitably, such subjection from above could only reflect the irrelevance of the chronologically-trapped individual for the successes of serial history and could only generate a passive acceptance of the officially sanctioned present.

The collapse of "really existing socialism" is the result of taking the promises of the Enlightenment too seriously. Soviet-type states assumed they were always right. By the end of the 1980s they had reached the logical conclusion of what happens when the fault is always elsewhere and that elsewhere turns out to be here. They turned into self-referential, monolithic fossils and denied the relevance of the people as anything other than a difficult contingency.

Glasnost and *perestroika* are the Party's desperate attempts to make people believe that it has erred. *Glasnost* will succeed to the extent that it can convince the people that perhaps nobody is to blame because there is no criteria of what is right and no standard that can legitimate a vanguardist history. *Glasnost* is the institutional attempt to escape from the Enlightenment legacy that the knowledgeable always know best.

The collapse of "really existing socialism" can be traced to post-Enlightenment issues and to Lenin's belief in the image and abilities of the heroic Enlightenment intellectual, even though the final blow was struck in the name of the Enlightenment ideal of freedom. The New Class in the West, the technocrats, bureaucrats and intellectuals have become extremely powerful as the rationalizers of a capitalism in perpetual crisis. They have managed to create, on a much smaller scale, roughly similar problems as in the East. Consequently, the West has an opportunity today to learn a very useful lesson from the Soviet experience.

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NOTES AND COMMENTARY:

Intellectual Eclipse

Robert D'Amico

In "The Intellectuals and the Powers" Shils defines intellectuals as members of society "with an unusual sensitivity to the sacred." These minorities reflect on natural laws and social rules. Further, they are "desirous of being in frequent communion with symbols which are more general than the immediate concrete situations of everyday life." Thus, "It is practically given by the nature of the intellectual's orientation that there should be some tension between the intellectuals and the value orientations embodied in the actual institutions of every society."[1]

Shils is trying to distinguish intellectual activity from other forms of thinking. But is it justifiable to distinguish, e.g., as Znaniecki does in agreement with Shils, between the "technologist" and the "sage?"[2] Of course, the term intellectual is often now restricted to research in universities and almost exclusively to academics. As Russell Jacoby and others have argued, this view collapses the sage into the bureaucrat or technocrat and has thus marked the eclipse of the accessible and recognized intellectual. It is also not surprising that discussions of the role of intellectuals become, as in the essays by Pierre Bourdieu,[3] almost exclusively discussions of the university and its structure, function and future.

In the past the term "intellectual" has been associated with theologians, politicians, artists and journalists. This historical shift from wider social circles to the university should raise some difficult questions. In what sense are these groups homogeneous or continuous, and in what sense can we assume similarities in their audiences, their audience's responses or their social function? Certainly the conception of what constitutes an intellectual and an intellectual's responsibilities has been transformed as these groups passed in and out of positions

1. Edward Shils, *The Intellectuals and the Powers, and Other Essays* (Chicago: Chicago University Press, 1972), pp. 3-7.

2. Florian Znaniecki, *The Social Role of the Man of Knowledge* (New York: Columbia University Press, 1940).

3. See, e.g., Pierre Bordieu, "The Corporatism of the Universal: The Role of Intellectuals in the Modern World," in *Telos* 81 (Fall 1989), pp. 99-110.

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of power. Should we be led to exclude, for example, the whole sphere of engineering, architecture, and practical sciences from the term intellectual or from this function and stigmatize their activity as "agents of instrumental rationality?" That assumption seems to me as reductive as the scientistic myth that after physics, "everything else is stamp collecting."

Also the terms sage and technocrat today are usually replaced by a distinction between the critical stance and the intellectual who "advises" those in power. The distinction between "critic" and "advisor" is as problematic and muddy as that between sage and technocrat. Furthermore, there are fundamental assumptions here about how thinking stands in relation to traditions and thus the implied distinction between "innovative" and "conservative" intellectuals is far too crude and often historically insensitive.

Every institution forbids some kind of activities, but the range allowed is rarely rigidly circumscribed. A technocrat is bound by certain constraints of the science to be applied and the task to accomplish. Similarly, an economic advisor is bound by what are considered practical decisions. But it should not be surprising that neither of these constraints overrides a wide range of interpretations of both the science to be applied and the objective situation to be managed. Are we totally certain that all of that does not deserve the name intellectual work?

These random questions suggest that there is a good deal of intuitive and uncritical appeal to assumptions behind debates about intellectual activity, academics and the "closing" of modern minds. Everyone knows anecdotal stories about bad students and worse faculty. What is difficult is to extrapolate and judge the historical specificity of these stories and their implications. I suspect that everyone commits the error of taking their experience for the exception to the rule. I also suspect, without being able to cite the evidence, that bemoaning the quality of students and suspicions about the irrelevance of instruction and pedagogy has probably remained roughly the same since Plato's Academy, where there was supposedly a message barring entry to those who had not studied mathematics. Institutions first and foremost exclude.

In David Lodge's novel, *Nice Work*, the third installment of his trilogy about modern academic life, he follows the career problems of Robyn Penrose, a deconstructive feminist who specializes in the 19th century British industrial novel. Penrose, who is struggling to maintain her temporary position at the fictitious Rummidge University, is forced by her Dean to participate in a program linking the university and the business community. She is assigned to "shadow," once a week, the activities of a local business manager named Vic Wilcox. Lodge sets the reader up for a cliched love-hate relation. Penrose's semiotic materialism, feminism and trendy leftist politics is treated as nonsense by Wilcox, and Wilcox's bottom-line managerial tactics, knee-jerk Thatcherism and traditional home-life are seen as a pitiful example of ideological mystification by Penrose.

What raises Lodge's light humorous novel to the level of probably one of the better sustained essays on academic intellectuals in the last few years is his ability to twist and counter these expectations in both enlightening and critical ways

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Thus, Wilcox's constant reply to Penrose's politics is the line "Who pays?" But Wilcox, who is married and morally straight-laced, has fallen in love with Robyn. By the end of the novel, Wilcox has learned to use this terminology and set of techniques in Penrose's intellectual world in a political reading of Tennyson, who in a poem constructed a metaphor based on his mistaken belief that trains ran in grooves in the ground the way trolleys do. The error, and Wilcox's ability to connect it both to his love of technology and his suspicions of intellectual traditions, allows him to rediscover his public voice. Likewise, Penrose finally dumps her academic boyfriend when she realizes he cannot defend the teaching of deconstruction to students against Wilcox's reasonable questions.

I will not continue with the story of the novel, but suffice to say that Robyn turns out to be a hard-headed realist about business, her career and her relationship with Wilcox. After their only sexual encounter, he confesses his love for her and asks if she loves him. She explains that her subjectivity is no longer constituted by the particular discursive formation of romantic love. Wilcox, on the other hand, is shown to be somewhat impractical, romantic and idealistic, but finally more linked to his community and society than Penrose.

Anyone who has taught or tried to survive in a modern university will recognize some central themes here. Every university pays more than lip service to having its faculty or researchers interact with the community. Through the National Endowment for the Humanities, which has separate grant facilities in each state, programs are funded and designed to bring together faculty in the humanities and social sciences with community leaders and the "public" in off-campus locations (the hard sciences and biomedical research normally make money for universities through the overhead paid on multi-million dollar grants and the PR function is unnecessary, since society is already predisposed to value such intellectual pursuits). These forums cover such topics as abortion, the death penalty, city planning, art in public places or waste disposal.

Some years ago I was invited along with faculty from universities on the east coast and southeast to a series of just such forums bringing together academics and Gulf Oil executives. The ostensive purpose, other than Gulf Oil needing some positive PR in the days of gas lines, was to combine the expertise of the universities with corporate leaders in an effort to "brainstorm" about problems affecting each other's institutions and society as a whole. The original idea was apparently unabashedly instrumental. For example, Gulf Oil selected English professors who specialized in rhetoric because they reasoned that what they needed was advice on how to "persuade" the public of their good intentions. I hardly need to detail how surprised they were at the results. Instead of getting some easily operational ideas they got, in some cases, arcane and abstract arguments about self-identity, textuality and the reproduction of ideology. But of course they also got faculty who produced the more expected results and often had survived at their universities by being the best apparatchik.

The results, as one can well imagine, were dangerously close to David Lodge's funniest moments, but also paradoxical. The intellectually adventuresome and

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perhaps innovative faculty often had the most difficult time communicating with Gulf personnel, even when they were motivated to do so. During discussions about nuclear power and alternative energy sources, these faculty were not effective in explaining and justifying their views to people who had some experience and expertise to offer in response. But, on the other hand, the academics who viewed this situation as a stepping stone to administrative responsibilities at their home university, and who had long ago given up on intellectual work, were most effective in talking with representatives from industry because they treated them, I imagine, as they treated their students. They did not challenge their received ideas nor the dominant conceptions of society which each had unreflectively internalized. They communicated entirely in what E.D. Hirsch calls "shared stereotypes," which give readily accessible and mutually agreed upon bits of information.[4] Any attempt to challenge or criticize these stereotypes or even bring them to the level of reflection was doomed to failure because of the preconditions inherent in this particular encounter between intellectuals and corporate executives. Thus, for purposes of Gulf Oil corporate interests, the intellectuals they could understand were not the ones that did them any good.

What this encounter and many similar situations have led me to conclude is that the intellectual demand for creative insight and generation of new ideas may be mutually incompatible with the demand that intellectuals, at least as we currently understand that group, provide the self-conscious voice of a public sphere. The moral of Lodge's story is that a Penrose plays the role of a "generative device" resulting in some silliness, some nonsense, but finally some creative innovation for a man whose life has become entirely routine and dead. We simply do not know where or how such new ideas will emerge.

I do not think we can dismiss Mill's still perceptive insight: "Strange it is, that men should admit the validity of the argument for free discussion, but object to their being 'pushed to an extreme': not seeing that unless the reasons are good for an extreme case, they are not good for any case. Strange that they should imagine that they are not assuming infallibility, when they acknowledge that there should be free discussion on all subjects which can possibly be *doubtful*, but think that some particular principle or doctrine should be forbidden to be questioned because it is so *certain*, that is, because *they are certain* that it is certain."[5]

It is easy to read this as outdated liberalism, but I can see no alternative to such a spirit in inquiry and, unfortunately, I cannot see how to reconcile it with the role of intellectuals as speaking for, articulating, or making conscious for society its goals, values or interests. I do not think this admission means that such clarification is left to either bureaucrats or other even more dangerous social groups; rather, it is impossible for one social sector to fulfill these opposed functions.

Also the effort to locate this crisis in intellectual responsibility in the transformation of the universities is perhaps too easy. The bemoaning of academics and

4. E. D. Hirsch, *Cultural Literacy* (Boston: Houghton Mifflin, 1987).
5. John Stuart Mill, *On Liberty* (New York, Norton, 1975), p. 22.

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their failings, recently recounted from a rightist perspective in Charles Sykes's *Profscam: Professors and the Demise of Higher Education,* is hardly specific to the universities after World War II. What is specific is that many more individuals entered the university, in both the student and faculty positions, and the same law applies to that situation as applies to music studies. You can teach more and more students to play musical instruments, and you can train more and more music teachers, but the percentage of truly remarkable musicians remains just about the same for each generation.

But more importantly, as Lodge's book subtly explores, we now have to realize that universities no longer care about what a faculty member writes, says or supports. The fear of radical messages and contents does not drive university administration or policy (of course I am describing a trend and there will always be exceptions or isolated regressions). The continuing charge that universities, through their bureaucracies, administrative apparatus, or alumni, suppress and homogenize intellectual life is simply groundless. If there is homogeneity, lack of creativity and nonsense, it hardly requires a tenure review board to enforce it. The administrative bureaucracy has immunized itself against radicalism by simply shifting its concern to productivity, student enrollment and reputation. But this situation is not Marcuse's repressive tolerance. There is no crevice of repression in which an academic intellectual can hook a fingernail.

How should we then study intellectuals and intellectual production? I suggest three strategies. First, reject the model of "critique" as a way to picture the ideal intellectual stance. I do not mean by this point that intellectuals do not serve the important function of providing criticism, negativity and "otherness." However, these functions can be carried on by other sectors of the social structure and it is not clear that this "stance," which has the partial function of justifying the intellectuals sense of importance, can be so defined as to be used as criteria for intellectual work. Otherness is always liable to be recuperated and truly radical criticism may appear as ineffectual or highly abstract and irrelevant. The position of the critic or outsider is certainly prone to self-mystification.

Second, we need to be more suspicious and "critical" about the distinction between instrumental-technocratic rationality and communicative-hermeneutic understanding. Therefore, the hypothesis should be considered as to whether instrumentality can be an insight into reality while so-called understanding can mark a hopeless disengagement from pressing tasks and demands. Sometimes it is important to know how a train actually does operate.

Third, it may be less and less important to think of intellectual health as coinciding with wholly autonomous, speculative and experimental work. Even dissent works by consensus and it is probably more important to look at what constitutes the assumptions for a variety of theoretical and practical projects than to decide in advance which positions are radical and which are conservative. In these ways we may eventually be able to define what is in fact a limited, historically contingent but nevertheless important role of intellectual activity in all social formations.

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*Serbian Apologetics: Marković on Kosovo**

Arshi Pipa

On January 21, 1986, more than 200 Belgrade intellectuals addressed a petition to the Serbian and the Yugoslav federal Assemblies, protesting the failure of the Yugoslav government to stop the oppression of the Serb minority in Kosovo and accusing the Albanian provincial leadership of collusion with the Kosovar separatist movement and the Albanian state: "As is well known, the expulsion of the Serbs from Kosovo and Metohija has been going on for three centuries. Only the protectors of the tyrants have changed, the Ottoman Empire, the Habsburg Monarchy, Fascist Italy and Nazi Germany have been replaced by the Albanian state and the ruling institutions of Kosovo. In place of forced Islamization and fascism there is Stalinized chauvinism. The only novelty is the fusion of tribal hatred and genocide masked by Marxism."[1] Among the signatories of the petition were the then editors of *Praxis International*, Zagorka Golubović, Mihailo Marković and Ljubomir Tadić. The January 4, 1990 issue of that journal has an article on the same question by Marković.[2] It begins with an analysis of the Serbian-Albanian conflict, which the author discusses in terms of four different contexts: national, political, socio-economic and ideological.

With respect to the national question, Marković states that Serbs cannot "give up" Kosovo to "Islamized Albanians," who "invaded and eventually conquered" the province.[3] But, according to Yugoslav historians, it was the Serbs who first conquered Kosovo towards the end of the 12th century.[4] Albanian historians maintain that Kosovo was inhabited by Albanians much earlier, whereas a foreign historian dates it "from the 11th century onward."[5]

Politically, the author reiterates the accusation in the petition, that "for years

* Following customary English usage, the author's designation of "Kosova" by its Albanian rather than its Serbian name "Kosovo," has been changed throughout.

1. "Petition by 200 Leading Belgrade Intellectuals," *Labour Focus on East Europe* (July-October 1987), p. 31 (translation modified).
2. Mihailo Marković, "Tragedy of National Conflict in 'Real Socialism' — The Case of the Yugoslav Autonomous Province of Kosovo," *Praxis International* (4 January 1990), pp. 408-24.
3. *Ibid.*, p. 409.
4. V. Dedier, I. Božić, S. Ćirković, M. Ekmečić, *History of Yugoslavia* (New York: McGraw Hill, 1974), p. 60.
5. Alain Ducellier, "Genesis and Failure of the Albanian State" in *Studies on Kosova*, East European Monographs, No. 155 (New York: Columbia University Press, 1984), p. 5.

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federal authorities did nothing serious to stop [the] expulsion of Serbs and Montenegrins in Kosovo."[6] Speaking of "minimal Serbian demands for constitutional changes" endorsed by Yugoslavia's League of Communists, he writes, "The change does not affect the autonomy of the province, not even some prerogatives that go well beyond autonomy (direct representation in federal organizations and the veto right)."[7] Those prerogatives, however, are unlikely to be implemented by the province's new pro-Serbian leadership, which merely rubber-stamps Serbian decisions.

He refers to the Yugoslav constitution to deny Kosovo the status of a republic. According to that constitution, only "nations" have the right of self-determination, including secession, but not "minorities," euphemistically called "nationalities." But does it make sense to treat as a minority an ethnic group of almost 2 million people?[8]

On the socio-economic level, the author praises Serbia's and the federal government's "generous financial aid" to Kosovo. He does not mention, however, that it started only in 1956-57. The increasing decline of the province's social product (from 45% of the Yugoslav average to 28% in 1986) is explained by the Kosovars' birth rate, the highest in Europe: "Islam strongly resists any family planning."[9] Elsewhere the author describes Kosovars as "Islamic Mujaheddins,"[10] thus joining the Milosević campaign of discrediting the Kosovar movement as one inspired by Moslem fundamentalism. The Kosovars' high birth rate ("three times higher than in the rest of Yugoslavia") is also found to be the cause of the province's high unemployment (35.5% as compared to Yugoslavia's 13.9%). Marković does mention other factors, such as bad investements and the Ottoman obscurantist heritage. But missing from the picture is royalist Yugoslavia's policy of forced obscurantism by denying Kosovars instruction in their Albanian language.

Ideologically, had Marković told how Albanians in Yugoslavia had been treated by the royalist regime, he would not find it "paradoxical" that, whereas Enver Hoxha's partisans joined Tito's army in fighting Italian and German troops, Kosovars hailed them as liberators.[11] For Hoxha, then a Yugoslav stooge, had no qualms about delivering Kosovo to the Serbs in exchange for recognition as Tito's satrap.

In addition to discussing the conflict between Kosovars and Serbs, the author sets the Kosovo question in historical perspective in a long section on "External Forces Interested in Kosovo." According to Marković, the roots of the conflict go back to 1878, to the creation of the League of Prizren, the Albanian nationalist movement whose program was the union of the four Turkish

6. Marković, *op. cit.*, pp, 410-11.
7. *Ibid.*, p. 411.
8. *Ibid.*, p. 414.
9. *Ibid.*, pp. 413-14.
10. *Ibid.*, p. 421.
11. *Ibid.*, p. 416.

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vilayets constituting the European part of the Ottoman Empire into an autonomous Albanian state. One of the four vilayets was Kosovo, with Skople (Shkup in Albanian) as its capital. According to the 1910 Turkish census, the vilayet, whose size was nearly that of present-day Albania, had approximately 1,271,500 inhabitants, of whom 742,500 were Albanians.[12]

The list of "external forces" is long. It begins with the Ottoman Empire, and continues with the Austro-Hungarian Empire, Italy and the Vatican, Great Britain, the Communist International, the US, Pan-Islamic fundamentalism, the Anti-Serbian bureaucratic coalition within Yugoslavia, ending with the Albanian state. Since China is also mentioned as part of the "external" (read: evil) forces,[13] the picture is universal, with Serbia as the target of an international anti-Serbian conspiracy. Too much honor for the philosopher's fatherland. One is reminded of Vico's observation in his *New Science* that historiography has traditionally been vitiated by "the conceit of nations," and "the conceit of scholars." Both a nationalist and a philosopher, Marković is a case in point.

The Kosovo question should be set in a Balkan rather than a worldwide context. According to the 1910 census, the population in the four vilayets was 3,088,700, of whom 1,920,600 were Albanian and the rest Turks, Serbs, Bulgarians, Greeks, Rumanians, Jews and Bohemians.[14] Had the Albanians succeeded in constituting Albania with an approximately 30% non-Albanian population, that state would have had more or less the same problems that plague Yugoslavia today. Now Albania is a small state with a population of little more than 3 million. Yet, next to it, there is a Serbian province called the "Autonomous Province of Kosovo," with a roughly 90% Albanian population. This "other Albania" does not want to be part of Yugoslavia, while being disposed to join Albania, if the latter ceases to be a Stalinist state. This is how the Kosovo question should be posed, i.e., from its present-day situation rather than beginning with the League of Prizren more than a century ago, or with the Ottoman and Habsburg empires back in the Middle Ages. Those empires make sense only in connection with, e.g., the nature of the Mujo and Halil cycle of epic folk songs, which are shared by both Serbs and Albanians. Marković's "genetic" method (he has read Gramsci, but has not understood him) applied to a burning political question places the cart before the horse. The case of the two Albanias is analogous to that of the two Germanys. East Germany was severed from the German mainland and constituted into a satellite of the Soviet Union after WWII, much as Kosovo was severed from the Albanian mainland after WWI, and constituted into a Serbian "autonomous" province after WWII. Now that East Germany has renounced Stalinism, the two Germanys are reunifying. Unification of the two Albanias is also possible, provided that: (a) a democratic

12. Antonio Baldacci, *L'Albania* (Rome: Istituto per l'Europa Orientale, 1930), p. 200.

13. ". . . Mao, who until the end of his life supported morally and materially Albania as his only ally in Europe, and for years insisted on a vicious propaganda campaign against Yugoslav 'revisionism'." Marković, *op. cit.*, p. 419.

14. A. Baldacci, *L'Albania*, *op. cit.*, p. 200.

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Kosovo resulting from free elections guarantees Serbian human, civic and cultural rights; (b) Albania is de-Stalinized and adapts standards of Western democracy; (c) Serbia recognizes Kosovo's right for full self-determination.

Marković's position is influenced by medieval historical and cultural considerations: "The region which was invaded and eventually conquered by Islamized Albanians, also happened to be the cradle of Serbian culture, the locus of the crucial event in the entire Serbian medieval history. . . . That is why Serbs cannot give it up." The "Islamized Albanians" preserved the Orthodox churches that are the pride of Serbian art, and did not turn them into mosques, as happened to Haghia Sofia. But Orthodox Greeks do not claim Constantinople as belonging to them on the basis that today the latter is a mosque. Why do the Serbs claim Kosovo as theirs? According to Marković, the main reason is the famous 1389 battle fought at the plain from which the province takes its name, and which marked the end of Serbian glory. The Serbian church turned that Serbian military defeat into a religious myth and made prince Lazar into a *figura Christi*. And since the Serbs could not take their revenge on the Turks, they blamed it on "Islamized Albanians" who settled in Serbian lands vacated by Serbs after the defeat of their two insurrections, in 1690 and 1737. Marković does not seem to know that, along with Serbs, Albanians (especially from the Këlmendi tribe) participated in the Austro-Turkish war of 1690,[15] migrating with Serbs, and settling in two villages in Syrmia. But Marković must know that the Christian army in the battle of Kosovo was not just Serbian. According to Turkish sources, Bosnians and Albanians also participated.[16]

Marković's phobia of "Islamized Albanians" leads him to accept uncritically rumors that Kosovar purchases of Serbian lands as well as weaponry and propaganda equipment come from pan-Islamic fundamentalist organizations. More than once his Serbian bias misleads him into contradictory or gratuitous claims. He rejects English criticism by journalists and diplomats that "Serbia violates the human rights of Albanians,"[17] but then he concludes that "It is necessary [for Serbs] to reaffirm respect for human rights for all citizens of

15. Peter Bartl, *Grundzüge der jugoslawischen Geschichte* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1985), p. 39.

16. Probably "annoyed" by Albanian zealots who have appropriated even the Serbian hero of the battle of Kosovo, Marković does not mention this historical fact: "Thus the legendary Milos Obilić turns out to be a certain Miljes Kopilji in someone's sick mind." Marković, *op. cit.*, p. 418. According to a chronicle by Gjon Muzaka, of the princely Muzaka family, his relative "Theodor Muzaka . . . fought the Turks with other Albanian princes." (See Giovanni Musachi, "Breve memoria de li discendenti de nostra casa Musachi," in Charles Hopf, *Chroniques greco-romanes inédites ou peu connues* [Berlin, 1873], p. 273). I share his annoyance, the more so since the zealots are found not only among Kosovars, but also among Albanians in the mother country. *Studime historike* (*Historical Studies*), No. 4 (1989), contains four articles devoted to the Battle of Kosovo (1389) in which Milos Obilić is consistently referred to as Millosh Kopiliq (Albanian *kopil* means both 'bastard' and 'tricky').

17. *Ibid.*, p. 418.

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Kosovo, entirely independently of what nationality or region they belong to."[18] He admits that Kosovars are entitled to autonomy, yet he blames the Yugoslav government for having "tolerated and officially participated at the celebration of the hundredth anniversary of the Prizren League,"[19] whose political program was limited to Albania's autonomy within the framework of the Ottoman Empire. It is exactly this kind of autonomy that Marković has in mind when he speaks of Kosovo's autonomy. Distinguishing neatly between autonomy and sovereignty, he conceives of the former as limited autonomy, the kind granted to a minority, his conception of sovereignty equalling that of suzerainty. This comes to light in the article's closing sentence, ". . . rather than jeopardizing their autonomy in Kosovo by abusing it, they [the Kosovars] should make best use of their rights and liberties and the material aid that would be available in Yugoslavia and Serbia."[20] The implication is that, having "abused" the autonomy granted to them by the 1974 constitution, Kosovars should resign themselves to their actual vassalage.

Thus, Marković theorizes what Milosević's policies have already achieved. His role as Milosević's mouthpiece becomes explicit when he writes approvingly of the "very strong popular movements [which] wiped out entire leaderships in Voivodina and Montenegro," adding, "The fact is that the general policy of the Serbian leadership really tends to renew and rebuild society on a genuine democratic socialist tradition."[21] The fact is that public opinion has compared Milosević's bands organizing those "strong popular movements" to the Italian black shirts and the German brown shirts, calling what Marković calls "genuine democratic socialist tradition" neo-Stalinism or Stalinism *tout court*.

But there is more. Speaking of possible alternative solutions of the Kosovo problem, Marković writes: "It is nearly impossible to see a solution that will be both reasonable and realistic. One based on violence is feasible and realistic, at least from a short-range perspective, but is unreasonable in the long run."[22] Here reason, associated with violence, is employed in the sense of the *ragion di stato*, as first described by Machiavelli and later defined by Italian authors such as Botero, Zuccolo and Settala. But Marković's language has a marked Machiavellian ring in that it debases reason to a tool of domination, irrespective of moral considerations. Marković discards repression not because it violates civic and human rights, but because it will not pay at the end, Albanians being a "proud and brave people impossible to conquer for good."[23] The

18. *Ibid.*, p. 423.
19. *Ibid.*, p. 412.
20. Compare: "There is no national minority in the world which has greater constitutional rights [than the Albanians in Yugoslavia], but its leaders and ideologues are leading it into a national adventure in which it can lose all." "Petition by 200 Leading Intellectuals," *op. cit.*, p. 31.
21. Marković, *op. cit.*, pp. 417, 419.
22. *Ibid.*, p. 421.
23. *Ibid.*, p. 422.

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language is that of an unscrupulous business operation, in total disregard of the sufferings and miseries of the people involved. One looks in vain for a note of compassion in Marković's article. He duly records the dates of the Kosovar demonstrations and strikes, only to condemn them, ". . . Albanian separatists went too far (with the violation of non-Albanian human rights, with sabotage, strikes and demonstrations and use of violence.")[24] What about the use of violence by the federal police resulting in the killings of 1981, 1989-90, and the more recent ones in February 1990?

Other passages show that nationalism can cause obfuscation and the loss of the sense of time. After mentioning that the Vatican is also interested in Kosovo because some Kosovars are Catholic, the author proceeds, "Another one is its interest in weakening the Orthodox Church. Supporting Muslims in Kosovo, Sanjak and Bosnia and Herzegovina serves a double purpose. Firstly, winning them over significantly strengthens Catholic Croats and Slovenes in the struggle against Orthodox Serbs. Kosovo is seen as an area in which for an indefinite time, Serbs will have to exhaust all their national forces. Secondly, if an independent Great Croatian state would be formed again . . . there would be a good chance of eventually converting to Catholicism all non-Catholics, including Moslems."[25] One can understand that Catholic Croats and Slovenes may weaken the Serb orthodox by winning over Yugoslav Moslems. But only a "small part" of Kosovars are Catholic. So, how can Kosovo be an area where "Serbs will have to exhaust their national forces?" This is a *non sequitur*. And is there any chance for Catholic Croatia today to convert people of other confessions? Marković's mind is fixed in the Middle Ages. The passage betrays a mental mechanism thrown out of gear by Catholic phobia.

No less weird is the other hypothesis (which the author attributes to "conservative circles") that Kosovo, seceded from Yugoslavia, "under the guidance of the Third (American) Prizren League,"[26] could become a NATO base for the overthrowing of the Stalinist regime in Tirana. The author must have heard that there is a group called the Kosovar League in the US. He does not know that the members of this group can be counted on one hand. The US, as the leading NATO power, was interested in Albania when the Soviet Union had a submarine base there in the 1950s. Thirty years later, and at a time when the Soviet Union is plagued with internal national problems and the Soviet bloc is disintegrating, does Marković's hypothesis make political sense?

He also writes that Hoxha wanted to "annex Kosovo." He is wrong. The Albanian leadership did not and could not entertain such an absurd thought. For in trying to swallow Kosova, Albania would inevitably choke itself to death. All Hoxha wanted was to create problems for his sworn enemy, which he did by setting up a cultural Albanian-Kosovar convention, involving, among other things, the Kosovars' adoption of the official Albanian language

24. *Ibid.*, p. 420.
25. *Ibid.*, p. 418.
26. *Ibid.*, p. 419.

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overflowing with Stalinist ideology.[27]

He is even more wrong in the article's last paragraph, where he writes that "Albania would have to be prudent enough to renounce the impossible program of creating a Great Albania from the parts of existing Balkan states. Each of those states — Yugoslavia, Turkey, Bulgaria, Rumania, Hungary — have millions of Albanians as minorities living in their countries."[28] Millions of Albanians living in Turkey, Bulgaria, Rumania and Hungary? Marković is ill-informed about the size of the Albanian diaspora. A good number of Albanians live in Turkey, perhaps close to a million. But in Bulgaria there remains only an Albanophone village, Mandrica. Quite a few Albanians live in Bucharest and perhaps Constanta. But Hungary (which, by the way, is not a Balkan country) is not known for having ever had inhabitants of Albanian origin. On the other hand, a great number of Arvanites (Greco-Albanian) live in Greece.[29] How are we to explain the omission of Greece and the interpolation of Hungary? I first thought the text was bungled by the typesetter, a line or part of it being omitted. Yet the text is grammatically faultless, it tells of "each" of the states named "hav[ing] millions of Albanians." Such being the case and further considering that the article is full of errors and inaccuracies — consistent misspellings of names ("Hohxa" for Hoxha, "Bali Komb'tar" for Balli Kombëtar) and erroneous dates (Italy invaded Albania in 1939, not in 1938, Albania achieved independence in 1912, not in 1921) my conclusion is that the article is biased as well as unscholarly.

As Yugoslav citizens living in socialist Yugoslavia, Kosovars want to be considered equal to other citizens, which they are not. As Albanian ethnics living in a South Slav state, they do not want to be discriminated against, which they are. Marković would like them to resign themselves to their condition as second-class citizens. They do well to reject that offer, for genuine democracy does not admit of first class and second class citizens. By behaving as they have, Kosovars have asserted a basic democratic principle, for which they should be praised rather than chastized. Their error is strategic. They should have been cautious not to provoke Serbian anger by leaving unpunished actions that offend the sentiments of the Slav minority in the province.[30] They should have

27. I have dwelt at length on this question elsewhere. See Arshi Pipa, "The Other Albania, a Balkan Perspective," in *Studies on Kosova*, *op. cit.*; "The Political Situation of the Albanian Yugoslavia, with Particular Attention to the Kosovo Problem, a Critical Approach," *East European Quarterly*, No. 2 (June 1989): *The Politics of Language in Socialist Albania*, East European Monographs No. 271 (New York: Columbia University Press, 1989).

28. Marković, *op. cit.*, p. 424.

29. More than 300 settlements, according to Hans-Jürgen Sasse, "Sprachkontakt und Sprachwandel," in *Papiere zur Linguistik*, Vol. 32, No. 1 (1985) (Tübingen: Günter Narr Verlag), p. 40.

30. "The provincial leadership had, by the late 1970s, begun to look tolerantly on expressions of Albanian nationalism, and would not permit criticism of developments in the province on the part of other republics — for example, in the case of the "Blue Book" of 1977 cataloguing Serbian grievances, which was suppressed, in part, due to the objections of the Kosovo provincial leadership." Paul Shoup, "The Government and Constitutional Status of Kosova. Some Brief Remarks," in *Studies on Kosova*, *op. cit.*, p. 235.

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refrained from adopting the Tirana flag and the Stalin-inspired standard language, which have made them suspect of irredentism. More generally, they should have moderated expressions of their nationalist fervor which was bound to provoke Serbian nationalist reaction. In short, they should have differentiated themselves from the Albanians in the mother country rather than identifying symbolically with them.[31]

But when I say "they" I do not mean Kosovars in general, but only their leadership, which has always been Stalinist in various configurations and degrees. Most of the "Djakovica group," led by Fadil Hoxha, who ruled in Kosovo almost as long as Enver Hoxha ruled in Albania, were initiated in communism while students at Albanian schools, and subsequently fell, just as Enver Hoxha and his group did, under the influence of Yugoslav Stalinists. Azem Vllasi, who replaced Fadil Hoxha after the 1981 riots, was the Serbs' *persona grata* and acted as such until he reneged. And Morina, who presently heads the Quisling leadership, was Kosovo's chief of police in Vllasi's team. Responsibility for the previously mentioned political aberrations lies with these leaderships, not with the Kosovars as a whole. Except for a small part affected by Albanian Stalinism, the Kosovars have always been (and here Marković is right) anti-Communists. Persecution has taught them a lesson, which is to emphasize human rights rather than nationalism, while also differentiating themselves from the Albanians in the mother country. Now they have opted for democracy, in opposition to the Quisling leadership, and are joining the great movement of emancipation which has swept Eastern Europe, including the Soviet Union.

Of this all-important ideological shift there is no sign in Marković's article, which seems to have been written before the Kosovar democratic movement entered the political stage. Yet, given Marković's anti-Albanian outlook, it is also possible that the positive development in question was deliberately ignored, opposed as it is to Milosević's drive. And Marković is a Milosević supporter. He writes, "Milosević resembles Gorbachev. Serbs try to save socialism in a similar way '*Perestroika*' does."[32] But even if it were true that Milosević is trying to save socialism in Yugoslavia, the question is whether his kind of authoritarian socialism deserves to be saved. By hooking Kosovo, Voivodina and Montenegro to the wagon of Serbia, Milosević has already succeeded in recreating Greater Serbia. Now his dream is to extend its power to federal Yugoslavia. Marković calls this "saving socialism in Yugoslavia." A better description would be: recreating Serbian imperialism.

Yugoslavia was never a genuine socialist society. It began as Stalin's darling among other East European states, and molded its own federation according to the Soviet pattern. The Soviet Union did not liberate non-Russsian peoples suffering under the Czarist yoke; it simply incorporated them forcibly into a

31. See my article, "The Other Albania, a Balkan Perspective," in *Studies on Kosova*, *op. cit.*

32. Marković, *op. cit.*, p. 418.

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"socialist" federation under the Bolshevik yoke. Following the Soviet example, "socialist" Yugoslavia did not liberate its non-Slav minorities; it incorporated them into a South Slav political scheme called Federal Yugoslavia. At some time in the latter's jerky development, Tito sought to prevent a resurgence of Serbia's hegemony in royalist Yugoslavia by granting autonomy to two of its provinces, Kosovo and Voivodina. An inter-federal balance of power was thus achieved which, however, did not last long; the Kosovar nationalist surge made it totter. When Serbia reacted, the two most advanced republics, Slovenia and Croatia, condemned the Serbian repression siding (Slovenia very strongly) with Kosovo. Subsequently, Slovenian Communists severed ties with the Federal League of Communists. Its Central Committee, which met on March 30, 1990, could not function, Slovenian and Croatian members failed to show up, and Macedonians and Bosnian-Herzegovinians quit.

The Yugoslav Federation ceased to work normally after Tito's death. It did earlier because there was a dictator who kicked it forward when it was recalcitrant. Pseudo-socialist conglomerates cannot last. And when Yugoslavia collapses, no one will shed tears, except fanatic Serbs and incurable Stalinists. At a time when the tide of democracy has flooded the Eurasian empire that inaugurated dictatorship in the modern era, Milosević's endeavor to emulate Gorbachev is doomed. Yet Marković believes Milosević is the Yugoslav Gorbachev. The socialist Marković believes in the redemptive virtues of Serbia, whose credentials are its control of the federal army and the security apparatus. And what is his solution? After pondering various alternatives and finding all of them impractical, he concludes that Serbia "will have to understand that Kosovo cannot again become ethnically Serbian, that it is necessary to maintain autonomy in the province,"[33] i.e., the present situation. He does not understand that his solution is no solution. He wants Serbia to rule over other nations. His concept of Yugoslavia reminds one of Stephan Dusan's Serbian Empire, which comprised Albanians, Vlahs and Greeks. His reactionary concept is pregnant with civil war.

33. Marković, *op. cit.*, p. 423.

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REVIEWS:

Reunifying Germany

David Marsh, *The Germans: Rich, Bothered and Divided* (London: Century, 1989).
Harold James, *A German Identity. 1770-1990* (New York: Routledge, 1989).

Late in 1989, Gordon Craig wrote a perceptive essay entitled "The German Dilemma" which, inside the publication where it appeared, carried another title — "A New, New Reich?"[1] Whether Craig chose these titles or not, they clearly indicated that he was at a loss to explain the current events in the two Germanys. Craig wisely refrained from predicting what would happen when Germany is reunified, but he did ask some of the more pertinent questions: "What kind of country will Germany become once it is reunited? More specifically, will it become any less democratic than the Federal Republic is at the present time? Is the present disenchantment with the West strong enough to lead to a reorientation of national policy? Is the present wave of enthusiasm for reunification likely to engender a new German nationalism, and if so, of what kind?"

Given the March 18, 1990 East German election results and Helmut Kohl's promise to foster a "new Reich" without causing the rest of the world to tremble, the answers to these questions are becoming more evident. In addition, the continuous reactions by various critics to the German spectacle of reunification, as it has been enacted thus far, are becoming clearer and are important

1. *The New York Review of Books* 36 (January 18, 1990), pp. 28-33. Craig covered an interesting array of books: Dennis L. Bark and David G. Gress, *A History of West Germany*, 2 Vols. (London: Blackwell: 1989); Peter H, Merkl, ed., *The Federal Republic at Forty* (New York: NYU Press, 1989); Wolfram F. Hanrieder, *Germany, America, Europe: Forty Years of German Foreign Policy* (New Haven: Yale University Press, 1989); Franz Josef Strauss, *Die Erinnerungen* (Munich: Siedler, 1989); Helmut Schmidt, *Men and Powers: A Political Retrospective* (New York: Random House, 1990); Anne-Marie Le Gloannec, *La Nation orpheline: les Allemagnes en Europe* (Paris: Calmann-Lévy, 1989); David Marsh, *The Germans: Rich, Bothered and Divided* (London: Century, 1989); and Harold James, *A German Identity. 1770-1990* (New York: Routledge, 1989).

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to consider since many have issued serious warnings that the joyous uprising in East Germany might signal a ghostly tragedy for the rest of the world. Though it is doubtful whether German reunification will lead to any tragedy, the entire process of reunification has been eerie. All the ghosts that have been kept safely in Germany's closets for the past forty-five years seem to have been set loose in one full sweep. Here Harold James' *A German Identity, 1770-1990* and David Marsh's *The Germans: Rich, Bothered and Divided* provide basic starting points for grasping the alleged dangers German reunification present for the West and the rest of the world.

James has written one of the more sober accounts of German identity that does not wallow in Faustian melodrama. Instead of presenting a positivist description of political and cultural events that led to the formation of a German nation and identity, James states that his book is "intended as an interpretative essay, not a political narrative. Its aim is to show links between reflection and imagination concerning nationhood, on the one hand, and, on the other, the institutions of public life and the politics of international order. Underlying this analysis is the question of connections between economic development and the instability of political identities, institutions and allegiances." James argues that German national identity is predicated on the strength and quality of Germany's economic formation as a nation-state that has made it more susceptible to radical reactions when there are economic crises. Unlike the people of other nation-states such as England and France, Germans did not form their national identity through the gradual development of public institutions that engendered a sense of commonality through particular cultural practices. Rather, James maintains, "the German peculiarity lay in the fact that it had a substantial bourgeoisie with a powerful and independent culture, and which thought in a 'modern' way, before there were really any of the substantial economic and political changes that accompanied industrialization. The middle class had a vision of the nation and proposed schemes on how to realize their ideal: through education, the construction of uplifting public monuments and through economic advance. This group looked at the French, English, and American models of modernity to shape the new organization of the nation" (214). Only after economic consolidation during the latter part of the 19th century did Germans begin to feel secure with their identity. However, such identification, based on economic *power* and *wealth*, was extremely fragile, and James shows how Germans have reacted aggressively when economic crises endangered the foundations of their national existence. That is, in the generational conflicts that ensued during and after major economic crises, the quest for a new national identity in Germany has often led to violent disregard for previous assumptions of what it meant to be German.

James' thesis follows David Blackbourne, Geoff Eley, and Thomas Nipperdey,[2] in discarding the accepted notion that Germans were unable to become a

2. Cf. David Blackbourne and Geoff Eley, *The Peculiarities of German History* (Oxford:

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true modern state because of the failure of the German bourgeoisie to bring about revolutions. They argue that Germany did become a strong modern state in the late 19th century because of the strength of the bourgeoisie. But according to James, Germany's strength was actually unstable, due to its reliance on economic power and not on deep-rooted institutions. "The German problem for over a century has been the heavy economization of political life, and a concentration on the values generated by material culture. In the past this has produced a dynamic stability, but also periodic instability and breakdown. Since WII, debates about the stability of Bonn politics have come and gone; in the late 1960s and the early 1980s the instability of Bonn was a fashionable topic, less so in the 1950s or the later 1980s. There is still no indication that the Bonn Republic or East Germany could really survive a severe economic crisis; on the other hand, there is, fortunately, as yet no indication that they will have to face one" (218).

Although James does not pay enough attention to socio-cultural factors that play a decisive role in the formation of identity, his major thesis offers new insights into the political behavior of Germans and, following his logic, it becomes clear how 1) the institutions of democracy in West Germany were copied by the Germans, or they were imposed on them by the Western Allies in 1945; 2) East German institutions were undemocratically instituted in 1949 by Communist decree; 3) West Germans have regained a sense of their so-called identity only through a spectacular economic development that has made them into the wealthiest country in the West; 4) East Germans have based their identity on the nation's economic process within the Eastern Bloc and are now seeking to identify with the powerful political and economic system of West Germany. Clearly, Germans in West or East Germany have created distinctive new identities not by overcoming their past nor because either country has created outstanding democratic institutions. It is once again German industry or *Fleiß* that provides the backbone to German identity.

If it is indeed the "economization of political life," as suggested by James, that is the peculiar constant in the German *Sonderweg* toward modernity and the formation of national identity, and if it is the basis for reunification and for a new German identity, then Marsh's book about the "rich, bothered, and divided" Germans is crucial for prefiguring future developments. As chief foreign correspondent for the *Financial Times*, Marsh has been on intimate footing with most of the leading politicians in West Germany and many in East Germany, and he has done exhaustive research about the political and economic developments in both Germanys, which makes his conclusions all the more disquieting (even though his book appeared during the late fall of 1989).[3]

Oxford University Press, 1984) and Thomas Nipperdey, "1933 und die Kontinuität der deutschen Geschichte," in *Nachdenken über die deutsche Geschichte* (Munich: 1986), pp. 186-205.

3. Some of Marsh's analyses and predictions have already been disproved by current events. But his depiction of how various institutions function and the ramifications

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One of Marsh's major premises must be qualified in view of recent events: "The Federal Republic is the only member of the western community with a built-in national grievance: the desire laid down in the constitution to re-forge, in some ill-defined way, national unity with the East" (p. 3). This is a recurrent motif throughout the book and has, of course, been undercut by what has already happened. Nevertheless, despite the fact that this grievance no longer exists, Marsh's description of the West Germans' yearning for reunification and the ways the West and East Germans have worked and struggled toward unity, reveals a good deal about the paradoxes surrounding the formation of West Germany. According to Marsh, "the list of paradoxes can be extended at will. Exports have given Germany wealth, but unwelcome dependence on outside events. Technological advance . . . is seen here, more than in most countries, as both deliverance and devilry. The Germans fret more than others about the damage to their forests from car-exhaust fumes, but appear to rule out one obvious remedy: driving their high-powered cars more slowly. They give priority to a society based on materialism and self-discovery, but worry when this leads to a loss of communal feeling or a sinking birth-rate. A slowdown in economic growth is welcomed by many because it may reduce environmental damage, but it adds to nervousness about whether the country can afford its generous social security and pensions systems. . . . To change the status quo in Europe, the Germans have first to accept it. Most paradoxically of all, only by providing evidence that they have outgrown nationalism can Germans have any chance of becoming a nation again" (p. 5).

In the sixteen chapters that follow Marsh's introduction of the paradoxes, it becomes disturbingly apparent that one of the major causes of all this is the West Germans' inability to build cultural and political institutions commensurate with the remarkable economic growth of both "nations." Although not fully elaborated in the book, another cause is the fact that there has been a frightening continuity in the industrial military complex since 1945 and to a certain degree in the judicial and educational systems, and this continuity has compelled Germans to emphasize economic consolidation and power over cultural and ethical concerns in the formation of a new identity. Without moralizing, Marsh demonstrates how quickly West Germans recovered from the war by resuscitating the powerful industrial and financial firms of the pre-1945 period and encouraging new production, partly through American aid and protection. Nazism and its repercussions were minimized or treated by specialists in anesthesia to cure those suffering from too acute a memory. The authoritarian nature of the cultural and political institutions was not really altered or questioned until 1968. Very few leading Nazis were punished much or at all, so the old power elites welcomed new productive forces to restore German industry to its former

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of political events in West Germany for industry and public institutions is highly informative and in keeping with James' claim of the economization of political life in Germany. Marsh intends to revise his book and publish the new edition in the Fall of 1990.

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status, reasserted themselves by the mid-1950s and enabled Germany to perform their so-called "economic miracles."

Of course, this continuity in the power structure was offset by a new constitution and a more democratic form of government that gave rise to the present parliamentary system and more egalitarian laws and institutions to resolve social conflicts. Even here, however, Marsh points out how the Flick affair revealed how business interests penetrate and corrupt all parties, the media,[4] and to a certain extent the civil service, thus resulting in a clear hierarchical class system. According to Marsh, the Germans operate largely by building a consensus on various issues that makes the majority feel as though they were part of a *Mitbestimmung* process (co-determination). It is their dread of turmoil that often governs their actions rather than a sense of civil courage or civil rights — and this dread is exploited by various elites. In other words, the so-called new "democratic" institutions have been shaped to bring about consensus, further economic development and keep political power within the elite social classes rather than to foster autonomy among the people and enable them to become aware of the causes of Nazism and develop a different national identity. The cultural-political continuity in West German society was one of the major reasons for the momentous student movement between 1968 and 1972 that did lead to some important changes in the educational system and in other institutions. It would, therefore, be extreme to argue that the political developments in West Germany have not brought about crucial transformations in the West Germans' social consciousness and behavior, and Marsh discusses all this. Yet, his outlook for the future is not optimistic.[5]

Though not a cynic, Marsh concludes that the "bothered" Germans will be a great bother for the West and the European community in the near future.[6]

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4. The Flick Company is a huge conglommerate that has holdings in steel, chemicals, paper, and automobiles. In 1981 *Der Spiegel* revealed that the company had been illegally channeling funds to the Free Democrats, Social Democrats and Christian Democrats for political favors. During the next six years, investigations proved that leading politicans such as Otto Graf Lambsdorff and Hans Friderichs (former economics ministers), and even Helmut Kohl were involved in corruption of some kind.

5. For instance, on the question of immigration, there are over 1.5 million Turks and another 150,000 immigrants from Yugoslavia, Spain, Italy, and other countries, who have not been able or have not wanted to obtain German citizenship. Since they have not felt welcome in West German society and have not been successfully integrated, they have been frustrated in their attempts to become "German." The strong xenophobic tradition in Germany persists, and it may even grow with reunification.

6. Marsh writes: "West Germany has more options than before — but it is also vulnerable. It has made heavy weather of using favorable economic and demographic conditions of the 1980s to prepare for slower growth and a fast-ageing population in coming years. Although potentially a source of badly-needed future pensions contributions, large-scale arrivals of immigrants have exacerbated social tensions. The quality of political leadership has declined. Germany may find it difficult to avoid being dragged towards the fatal temptation of trying to play off East and West against each other. In spite of embedment into the European Community, and the international orientation of the

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Since September 1989, the self-absorption of the Germans, West and East, has grown, and the move toward reunification has caused tremors and fearful reactions in friendly and hostile nations, not so much because anyone wants to deny the Germans the right to reunify, but because of the way Germans have gone about it. Numerous West Germans have banded together and are seeking legal means to regain property they owned in East Germany.[7] Various business firms have formed alliances and have already bought into East German companies or former collectives.[8] In general, there is a colonization of East Germany that, though publicly condemned, will eventually lead to the complete capitulation of the former East German society to the West German way of life.[9]

Innumerable voices inside and outside the Germanys have expressed their concerns about the spectacle of German reunification.[10] Jews in Germany and

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economy, the Federal Republic during the 1980s has grown less outward-looking, more absorbed with itself. In relations with NATO, as the results of the Intermediate Nuclear Forces agreement have underlined, West Germany is increasingly prone to consider itself the victim of anti-German policies. Explicitly or implicitly, many Germans believe that the country is still unfairly carrying burdens imposed by the war victors — a mood disturbingly reminiscent of the self pity of the 1920s" (p. 322).

7. See Kuno Kruse and Birgit Schwarz, "Wem gehört die DDR?" *Die Zeit* (March 16, 1990), pp. 17-22.

8. See Wolfgang Gehrmann and Thomas Kleine-Brockhoff, "Der Elektro-Anschluß. Bundesdeutsche Konzerne drängen mit Energie nach Osten," *Die Zeit* (February 9, 1990), pp.15-18.

9. As Wolf Biermann has written, "Socialism is no longer the goal. Nor do people want to hear about a socialism with a humane face. In 1968 Dubcek had enflamed our hearts with this tautology. But even that is now *passé*. The animal experiment with live human beings that had great potential has been ended. It's a shame, but it's also lucky. Even the most ordinary annexation (*Anschluß*) with the Federal Republic is still better than everything that went on before." See Wolf Biermann, "Das wars. Lappe zu. Affe lebt," *Die Zeit* 10 (March 2, 1990), p. 66. See also Michael Naumann, ed., *Die Geschichte ist offen. Schriftsteller aus der DDR über the Zukunftschancen ihres Landes* (Reinbek: Rowohlt, 1990). This book contains interesting analyses and prognoses by Christoph Hein, Volker Braun, Monika Maron, Stefan Schütz, Günter de Bruyn, Günter Kunert, Roland Links, et al.

10. One of the most conspicuous critics has been Günter Grass, who has argued in vain for a German confederation: "What is needed is not a patronizing 'quick boost' or a brisk buyout of the 'bankrupt GDR,' but rather a far-reaching equalization of burdens, payable at once and with no conditions. We can finance the debt we owe by cutting our military budget and imposing on every West German citizen a surtax commensurate with his or her income. Only then, when our compatriots in the GDR . . . receive justice from our side, only then can we speak and negotiate as equals, they with us, and we with them, about Germany and Germany, about two states with one history and one culture, about two confederated states in a European house. The precondition for self-determination is all-encompassing independence, and that includes economic independence." Fearful that Germans will forget Auschwitz and that West Germans will take charge of East German society and transform it into another capitalist state eliminating the possibility for creating a middle way between capitalism and communism, Grass has stated clearly: "No, I don't want an enlarged Germany that would be propped up in such a demeaning way through intervention. . . . In the end we will have about eighty million

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Israel are particularly anxious and skeptical about the rise of a unified Germany.[11] And in the US, Arthur Rosenthal has written a series of columns expressing similar sentiments among many Jews and Americans.[12] The whole turn of events is perhaps most embarrassing for the French, who fear the collapse of the European community and certainly the hegemonic role that France had hoped to play alongside West Germany. Even though Mitterand has remained calm and has treated the specter of a powerful Fourth Reich turning its back on its Western alliance with equanimity, French newspapers and magazines have printed articles characterized by their paranoia, hysteria, disgust, outrage, and even compassion. From *Le Monde* to *Figaro*, *L'Express* to *Le Nouvel Observateur*, special issues have expressed tremendous concern about the consequences of

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people. We will be unified again, strong and even when we try to speak softly — loud to hear. Finally — since enough is never enough we will succeed with our proven hard currency, the D-Mark, — after the recognition of the Polish western borders to subdue good parts of Schlesia and Pommerania economically in German picturebook fashion and to become feared again and isolated. I am already going to betray this fatherland right now. My fatherland would have to be more differentiated, more colorful, more neighborly, and it would have to be more intelligent after the destruction and more tolerable for the rest of Europe." See Günter Grass, "Germany: Reunification Should be Opposed By Germans, Too," *International Herald Tribune* (January 8, 1990), p. 6; See also "Kurze Rede eines vaterlandlosen Gesellen," *Die Zeit* (February 9, 1990), p. 61; "Schreiben nach Auschwitz," *Die Zeit* (February 23, 1990), pp. 17-18.

11. Although Israel may profit from the change in East Germany through reparations and better relations with Warsaw Pact countries, Fredy Gsteiger explains that "where other countries set up monuments for their victories and heroes, Israel commemorates its sufferings and victims. Even today, forty-five years after the end of the war, the Nazi crimes remain the event that has eternally stamped the soul of the people. There is not one day that goes by on which a politician or political commentator recalls the crimes against the Jewish people. The German spirit (or specter) has popped out of the bottle again and the Israelis are convinced about this. Even with ironclad guarantees of democracy this spirit will not allow itself be tamed. What is necessary is a change in the heads of the Germans. And such a change, however, is being absolutely denied. Even the influential publisher of the left-liberal daily *Ha'aretz*, Gerschom Schocken, has his doubts when he draws a direct line from the Germans in WWI and WWII to those of today and suspects them of still having the wish to dominate." See his "Deutschland ein Trauma," *Die Zeit* (February 9, 1990), p. 8. See also Hans Schueler, "Ein Kanzler ohne Stil," *Die Zeit* (February 9, 1990), p. 8.

12. He writes: "The burden has been lightened by those Germans who since World War II have not only denounced Nazism but have done something more important — shed light on its shadows in German politics and education. But the heritage of fear still exists. Germans, old or young, who deny it are endangering themselves and those around them as we all do by denying the truth. . . . Every day the nervousness becomes more obvious as more people speak up — the Poles saying they will keep Soviet troops on their soil, European nations demand to be part of the unification process, Israelis pondering German contributions to the Libyan chemical weapons plant. Only in the United States is there no real discussion. America, for all its pride in individuality, usually follows its leader. President George Bush has not even bothered to talk to us about unification, one of the most important events of our time. You can see why it's embarrassing." See A.M. Rosenthal, "Not Guilt, but an Inheritance," *The International Herald Tribune* (March 12, 1990), p. 10.

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German reunification.[13] Indeed, within a day after the election results, both Mitterrand and his foreign minister, Roland Dumas, called for accelerating the plans for economic and monetary union in the European Community.[14] Due to conflicts with both Great Britain and West Germany, the French government fears that a common European currency will either be neglected or achieved under conditions dictated by a united Germany that will no longer have Europe's interests at heart. Rather, German economic interests will predominate over those of the European Common Market. Or, as the title of an article in *Libération* announced after the elections in East Germany, "Kohl et le deutschmark, vainquers par KO," and, indeed, the German Mark has triumphed and appears to be the basis for German identity and unity in the 1990s.

Most critics fearful or skeptical of German reunification have used moral arguments either to argue against unity or to warn the "world" about the consequences. However, the East Germans have proved the old Brechtian slogan "*Erst kommt der Magen, dann die Moral*" to be correct. In this case, "first comes reunification with better living conditions and more money, then we'll talk about morals." National polls taken right after the elections indicated that most East Germans voted for the party that would guarantee rapid economic reforms and a transformation of their currency into West German marks on a one-to-one basis.[15] More than a third of the population felt that the Alliance for Germany would be the most competent in bringing this about. Moreover, the Alliance was clearly anticommunist, while the SPD's image was ambivalent. In sum, the East Germans responded to the real conditions of socialism in their country and reaffirmed Harold James' thesis that the driving force behind German identity and nationalism is economic power and consolidation.[16]

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13. See "Berlin" *Libération*, Libération Collection numéro 4 (December 7, 1989); "Les Allemands entre L'Est et L'Ouest," *Le Monde*. numéro spécial (January 1990); Alfred Grosser, Michel Korinman, and Anne-Marie Le Gloannec, "La Hantise de la Grande Allemagne" *L'Histoire* 130 (February 1990), pp. 78-86; "La Grande Bataille de L'Après-Communisme," *Le Nouvel Observateur*, 1313 (February 1-7, 1990); "Une Allemagne," *Les Cahiers de L'Express* Hors Série Numéro 2 (February 1990). On March 29, Kohl made a special appearance on French national TV to assuage the fears of the French. In fact, he stated clearly that he wanted to speed up the process of European political unification. See Claire Tréan, "Le chancelier Kohl veut hâter l'union politique européenne," *Le Monde* (March 30, 1990), pp. 1, 4.

14. See Claire Tréan, "Paris voudrait accélerer l'integration européene," *Le Monde* (March 21, 1990), pp. 1, 5.

15. The complete results of the polls, conducted by the BVA and INFAS, the French and German national polling institutes, were printed in *Libération* (March 19, 1990), pp. 2-4. See also Manfred Berger, Wolfgang G. Gibowski, and Dieter Roth, "Ein Votum für die Einheit," *Die Zeit* (March 23, 1990), p. 5.

16. In a revealing article entitled "Le bégaiement des intellectuels allemands" ("The Faltering of German Intellectuals") printed in *Le Monde*, March 29, 1990, p. 5, Luc Rosenzweig analyzed why most of the leftists and liberals in both Germanys, who pleaded for retaining two German states, had deceived themselves about the nature of East German society and created a situation that has led to their alienation from the

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What is most interesting about the East Germans' actions is that they have challenged the notion that there is a specific cultural, regional, or racial driving force behind their struggle for liberation and reunification. In other words, they are not motivated by a deep-seated belief in their "German" identity. Most East Germans have long since recognized the Oder-Neisse borders. Most East Germans are obviously not tied to their "homeland," otherwise there would not be such a great migration to the West. Most East Germans have not read the works of contemporary West German intellectuals, not to mention their own. They do not feel deep cultural or normative bonds with one another or with the West Germans. But they have all watched West German television and have all spent years of admiring and envying the material accomplishments and comforts of the West Germans. And why shouldn't they? Or, why shouldn't the East Germans become like the West Germans, who are not very different from their West European and American "compatriots"?

What is troubling about the German spectacle of reunification is the double-standard system, based on Auschwitz and a Kantian categorical imperative, that is being used to judge Germans, while it is disregarded by other nations, including Israel, when it comes to evaluating their own performances. No one mentions problems of racism in France, the US, Italy, Israel, and Great Britain when discussing the resurgence of anti-Semitism or racism in the two Germanys. No one alludes to the impact of American imperialism during the past twenty years when talking about the Germans "natural" urge to dominate. No one discusses the breakdown of the American or Israeli infrastructure, especially in the realm of education, social programs, and transportation when talking about German authoritarianism in public institutions.[17]

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majority of the German people in the East and West. Despite all the political repression and the economic deprivation in East Germany, the intellectuals believed that there was something valuable left in East Germany that distinguished it "morally" from West Germany. The "socialist" experiment might eventually lead to a different society from the cold and materialist West German society. There appeared to be something more humane and more genuine in the East German relations. In other words, intellectuals in East and West Germany unwittingly bought part of the propaganda of the SED and idealized the suffering and isolation of the East Germans that made them somehow morally superior and represenative of a better Germany than the West. The East Germans, however, proved that there was nothing noble about their suffering or the real existing conditions in the German Democratic Republic, but something eminently wrong about the lenses with which the intellectuals had regarded them. As Rosenzweig put it, " 'Those who arrive too late are punished by life,' Mikhail Gorbachev had said on the eve of the collapse of Erich Honecker's regime. In marching resolutely on the sidelines, if not against the current of the real country, the intellectuals of the two Germanys have missed the train of history. They have left the honor of bringing about a union between the intellectuals and the people within a revolutionary movement to their Czech neighbors: the favorite parole at the Venceslas Square in Prague was 'Long live the doers!' "

17. As Bruce Nelan has put it: "Europeans may have managed to submerge the fact of West Germany's economy before, now they must come to terms with it. Although

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In other words, the fear spread by the media, statesmen, and critics in different countries about German ghosts rising out of the dark closets of the past to bring terror to the world again has masked real US and European concerns that the Germans may have become "superior" to their competitors in playing the capitalist market and managing their own economy. This superiority is resulting in a shift in the alignments of political blocs of the West that will enable a united Germany to play not only the dominant economic role in Europe but probably the dominant political one. Paradoxically West Germany has become "frightening" because it has become exactly what the western allied forces wanted it to become after 1945 — the best example of what capitalism can be in the West. Moreover, West Germany has even exceeded the expectations of their allies, for the Germans have become politically more autonomous than even they themselves had hoped they might become and are making decisions that affect the economic and political well-being of both the East and the West. What may be most difficult to accept — and this may be the haunting quality about the changes in both Germanys — is that the Germans are actively rejecting an old tendency of *Ungleichzeitigkeit* (nonsynchronicity). This was the concept that Ernst Bloch developed in *Erbschaft der Zeit* (1935) to explain why and how the Germans became so susceptible to Nazism. According to Bloch, large segments of the German population, particularly from the agrarian and lower-middle classes, felt incapable of moving with the times, that is, with the rapid industrial and technological changes of modernism, and their frustration left a void in their lives that the Nazis managed to fill with mythic relics that idealized German cultural community and unity. As Bloch explained, there were various kinds of "nonsynchronicities" that made vast sectors of the German population feel as though they were being bypassed, and due to a need for security they lunged backwards or were attracted to the atavistic symbols of Nazism with all its false promises to fill the voids in their lives. This is not the case today. In fact, if anything, the East Germans have demonstrated that they want to lunge forwards and become "*gleichzeitig*," and though some critics have alluded to the fact that there is a new "*Gleichschaltung*" that is being imposed upon the East Germans, a reference to the manner in which the Nazis made everyone conform to their policies, the German people are not behaving any differently than their neighbors in the West and East. Again, if anything, they are ultimate representatives of the development of advanced capitalist societies, and if this is frightening, it is not because there is something peculiarly "German" about their transformation as "modern" citizens. Indeed, all the talk and fear being spread about the resurgence of German nationalism (a euphemistic term for Aryanism or Nazism) is

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mutterings in London, Paris and elsewhere imply the opposite, running a powerful and profitable economy with a skilled and diligent work force does not constitute aggression. When some Western politicans and intellectals speak of a revived German threat, they may be fretting about a Germany lording it over Europe, but they are also masking their concern about competing with it economically." See Bruce Nelan, "The Germans: Should the World be Worried?" in *Time*, international edition (March 26, 1990), p. 16.

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the flip side of anti-Semitism. The Germans are not born with an innate will to dominate. They have become what they are with the help of their "allies."

Today, especially in regard to issues pertaining to European unity, the Germans are not behaving in any way to cause tremors in the world.[18] They are being very careful to achieve consensus with their neighbors and the Allied Forces about these aspects. Of course, they are now doing this out of a position of political and economic strength which may not be to the liking of many of their critics. However, there would be something "*ungleichzeitig*" in any endeavor to restrain Germany — to compel Germany to live as though the past were still dominating the present and to live in conditions that the Germans do not want.

The moral issues raised about the reunification of Germany are obviously not to be whisked under the carpet as Kohl and many other German politicians would like to do. Thus, Jürgen Habermas talks about the insolent and imperious manner with which the Kohl government has acted and endeavored to foster German reunification. Indeed, he feels that Kohl's actions could lead West Germany to a relapse as a post-industrial nation-state and to prioritize materialism and authoritarianism once again as factors in its self-identification process. According to Habermas the West Germans identified themselves up through the 1970s by minimizing if not represssing the Nazi past, supporting the Cold War and anticommunism, orienting themselves to Western, especially US, values and taking pride in their economic achievements. By the 1980s, the economic component in German identity remained strong, but the West Germans had also learned to identify with their constitution and explore the democratic initiatives through the legal apparatus. Such a transformation led to a normative identification with West Germany as a republican nation. Now Habermas' fear is that the Germans will be manipulated by material interests and identify themselves once again primarily through the D-Mark that will be equated with their power in the world. Thus he asks: "What is going to become of German identity? Will the economic problems steer the unification process along sober lines? Or will the D-Mark become libidinally loaded and, because of this, emotionally inflated so that a kind of economic-national attitude will overpower the republican consciousness?"[19] What is most interesting about these questions and reflections is that they lead back to James' thesis in *A German Identity*, i.e., that the backbone of the German identity has historically been economic, even

18. As former chancellor Helmut Schmidt remarked in a recent article in *Die Zeit*, "both German governments must seek above all the consensus with their neighbors and the four victorious forces of 1945. Here there are four principle aspects: the security interests of both the West and the Soviet Union; the security interests of Poland, especially the Polish western border; the membership of united Germany in the economic and monetary union of the European Common Market; finally, the economic help of the West for Poland, Hungary, and Czechoslovakia (and possibly also for other states in Eastern Europe including the Soviet Union)." "Schritt um Schritt zur Einheit," *Die Zeit* (March 23, 1990), p. 3.

19. See Jürgen Habermas, "Der DM-Nationalismus," *Die Zeit* (March 30, 1990), pp. 62-63.

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when the Germans gradually come to identify with legal and normative aspects of their constitution and institutions.[20]

Habermas does not give up hope for the Germans, for he maintains that the they still have the opportunity to make their own autonomous decisions in the West and East and thereby bring about a truly new German identity based on loyalty to democratic laws and a republican Constitution. Nevertheless, there is something chilling in his account, for he is much more convincing when he talks about how the Germans will probably create what he calls a "DM-Nationalismus," rather than a state in which loyalty to egalitarian laws and democracy prevail. The Germans will not readily give up what they have worked hardest to achieve since 1945, which is economic predominance in the Western World.

There is indeed something eerie about the fact that the Germans have profited most from World War II and are in the process of creating a powerful nation that is for all intents and purposes *judenrein*. There is also something troubling about the fact that Germans are still disturbed despite their affluence — as Marsh documents in *The Germans*. But, given the economic strength and stability of West Germany and the potential of East Germany, and given the fact that the American and Soviet military forces will remain dominant in Europe for some time to come, there is absolutely no danger that a "new" German nationalism may run amok. Indeed, the German economy will be the motor behind the restructuring of European capitalism and will define what it means to be a European. The only specter haunting the world today, especially the West, is the one cast by the reflection in the mirror.

Jack Zipes

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20. *Ibid.*, p. 62. Therefore, it is not suprising that Habermas believes West Germans have reached a crossroad which will determine the democratic or undemocratic nature of the future unified Germany. "The economic premise that the national civic (*staatsbürgerlich*) altruism will not be costly for anyone is only valid in peaceful times. What will become of the mentality that the West Germans had actually acquired after forty years in troubled times? West German citizens had developed a non-nationalistic self-understanding and a sober view for that which is a product of the political process in terms of cash and use values. What will happen to this disposition under the pressure of a politics that conceals insecurity with arrogance and is geared toward rapidly bringing about a united German national state? Since the premise that reunification will not cost anything to anyone is no longer possible to maintain today, the Alliance for Germany could continue its electoral campaign on West German soil with slight variations and call for collective efforts on the part of the citizens here in the spirit of a nationalistic identification with the expansion of that DM-Imperium, from which they have lived very good thus far."

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Vanguard and Critique

Russell A. Berman, *Modern Culture and Critical Theory: Art, Politics, and the Legacy of the Frankfurt School* (Madison: University of Wisconsin Press, 1989), vii+177pp.

This book is a collection of essays written at different times. What unites them is Berman's critical perspective, whereby he contraposes Critical Theory to the modes of thinking he labels post-modernist. His argument is particularly focused in the last two chapters, "The Peace Movement and the Avant-garde" and "The Vienna Fascination." The target is "a cultural relativism that resists judging political conditions in terms of universal norms" and renders any attempt at a systematic critique of injustice impossible (220). Berman recognizes in Kurt Waldheim and in the current fascination with Central Europe a "psychopathology of neutrality" that paralyzes attempts to define a progressive politics and condemns those who seek a nonconflictual political practice or cultural analysis to the "passive vacillation" and impotence that characterizes Waldheim's Austrian politics and the search for neutrality (236-37). In Berman's view, appeals to neutrality amount to demands for complicity because neutral moral, political, aesthetic or geographical ground is unavailable.

Berman's contempt for post-modernism is the recurrent theme that makes of *Critical Theory and Modern Culture* a whole. He is most intent upon counteracting the influence of Lyotard and Foucault and he attempts to do so with Critical Theory as exemplified by Horkheimer and Adorno in *Dialectic of Enlightenment*. However, the "tension" Berman notes "between the legacy of critical theory of the Frankfurt School and some major developments in recent thought" (3) may not simply be external to Critical Theory, existing only between the legacy of Horkheimer and Adorno and the representatives of "recent thought." The legacy of the Frankfurt School may already be implicated in post-modernism. Thus it may be more interesting and accurate to consider the tension *between* Critical Theory and recent thought as one *within* Critical Theory — a crisis that calls the self-identity of Critical Theory and its legacy into question. If post-modernism adds new poignancy to the perpetual crisis in Critical Theory, it may be because it shares the desire to analyze oppression and criticize domination. Post-modernism, particularly as Lyotard and Foucault exemplify it, may in fact claim a share of the legacy of Critical Theory.

Unfortunately, Berman's treatment of Lyotard, Foucault, popular culture, and current politics appears less interested in exploring the tensions between Critical Theory and "major developments in recent thought" than in reclaiming

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and reasserting the untroubled superiority of his own reading of Horkheimer and Adorno. Berman's book tends to misrepresent the various critical traditions — French, American, German — that it negotiates. Such polemical readings as aggression, forgetting, resistance may also be an ineluctable part of the legacy Berman seeks to defend. Though he has little interest in interpretive problems as such, his presentation reflects a problematic relation between interpretation and critique that is part of this legacy.

Autonomy, Judgment and the Avant-Garde

For Berman, the Adornoesque rejection of all contemporary culture in the interests of an autonomous critical position may be the most notable legacy of the Frankfurt School.[1] He argues against the "alternative within the neo-Marxism of the Frankfurt School to the classic position of Theodor Adorno" (34) found in Walter Benjamin's "The Work of Art in the Age of Mechanical Reproduction." He also argues against Bürger's analysis of the "historical" avant-garde's attack on the institutions of autonomous art in the first decades of this century (44-53). He questions both Benjamin's vision of redemptive force in mass produced art and Bürger's implication of avant-garde aesthetics in the commodification of contemporary culture. The avant-garde that Berman would reclaim and oppose to both Benjamin and Bürger combines artistic and critical autonomy with social and political engagement. It escapes the fate of the historical avant-garde Bürger describes which, "despite its emancipatory claims, is implicated in the construction of modernized systems of domination" (51). Berman's avant-garde would restore the true autonomy of art and criticism over and against the myths and distortions of the commodified world of late capitalism.

Hostility to avant-gardism presumably furnishes the crucial common denominator of all those Berman, following Habermas, calls "neoconservatives." Accordingly, former Secretary of Education William Bennett, Lyotard and Foucault all share this "hostility to the ethos of the historical avant-garde" (44). Whether or not Bennett has much in common with these Frenchmen, Berman's true enemy is post-modernity, as he understands it, and its distinctive characteristic is its hostility to avant-gardism. The post-modernist derides everything he imagines the avant-garde stands for, and this amounts to little more than a flight from political and moral responsibility legitimated by a "rhetoric of pluralism that allows its defenders to denounce the critical advocates of liberation as totalitarian." Post-moderism denies the autonomy of both art and criticism: "Although it may carefully sketch power structures and practical strategies, its rejection of emancipatory autonomy precludes any systematic

1. This, of course, is not the only possible reading of Adorno's legacy. Andreas Huyssen has argued for a "hidden dialectic" within the representations of the culture industry that make them available to analysis as fields of contestation. He also claims that a more tempered view of mass culture can be found in Adorno's work. *After The Great Divide: Modernism, Mass Culture, Postmodernism* (Bloomington and Indianapolis: Indiana University Press, 1986), esp. pp. 3-62 and 141-221.

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critical project. Once concepts of truth are treated solely as vehicles for the establishment of an exclusionary discourse and taste becomes only a ploy to establish social distinction, the utopian potential of the autonomous artwork is lost from sight" (51-52). Yet in championing emancipatory autonomy, Berman begs the crucial question. Advocating liberation does not guarantee liberty. Emancipatory claims often legitimate oppressive practices. The "rhetoric of pluralism" that Berman decries has sometimes argued against or reacted to such oppressive emancipations. Apprehension concerning the gap between claims and practices — between false and true legacies of liberation — may, as Berman claims, shape post-modern sensibilities. But Berman does not find the problem very compelling, perhaps because he understands it so well. Near the end of his analysis of desublimation in modern art, Berman pleads for a "reauraticization of art that would escape the force of the culture industry" and yet not "return to the traditional elitism of the liberal bourgeois period" (98). But the paradoxical terms in which Berman describes the position of this art suggest the difficulties attending his claims for autonomy. He imagines an art advanced yet democratic, accessible to the people yet not subject to commodification, auratic yet unavailable as a weapon against excluded groups, powerful in itself and participating in the play of power yet not vulnerable to the moral dilemmas and dangerous potentials of power.

Berman's utopian perspective often figures as an imaginary projection of a nostalgically remembered past. His argument tends to mask the potential for real violence within the vanguardist aesthetics and politics he advocates in the name of moral and political responsibility. Violence in the interest of justice may be unavoidable, but the utopian vision may obscure rather than illuminate its role. This is the most important point.

Berman finds nothing essentially problematic in Lenin's vanguardist identification of "the intellectual leadership as the authentic source of revolutionary consciousness which could never develop in the merely economist struggles of the working class reformers," though he notes that such vanguardism in politics and art does tend to "ossify" a "heteronomous" relation between a small elite and a disenfranchised mass (190-91).[2] Like Bürger, he notes that: "The artistic avant-garde, which intended to revolutionize the bourgeois institution of art, has become the aesthetic meat and potatoes of established taste, and the revolutionary party transformed itself with equal rapidity into a new autocracy. I label this last similarity the 'reification of the avant-garde,' another version of a recuperated modernism" (194). And yet, autocracy may be implicit in the vanguardist's position from the beginning and not just a development in its reification. The problem of the avant-garde involves the problem of judgment.

2. Berman manifests the intellectual's contempt for the popular, which is traditional not only in Frankfurt School criticism but in the history of both the Right and the Left in the US. For an illuminating analysis of this tradition in general and a consideration of its relation to the avant-garde in politics and art, see Andrew Ross, *No Respect: Intellectuals and Popular Culture* (New York and London: Routledge, 1989).

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The critical or political avant-garde must impose its judgments on the culture and material life of those whom oppression renders incapable of judging or creating for themselves, or so the vanguardist claims. Such an imposition may be irreducibly autocratic. Aside from the privileges and power of membership in an elite, what licenses the vanguardist's activity? The political avant-garde, which sees its own necessity in the inability of oppressed people to understand their own situation, legitimates its judgments and programs by appealing to the autonomy and disinterestedness of its vision. If that autonomy and disinterestedness is in doubt, then the problem of the avant-garde involves more than the reification of just sentiments or the recuperation by a social hierarchy of insurgent impulses. The avant-garde may be as distorted and compromised by power relations and oppression as those whom they judge. The avant-garde itself may be an expression of the hierarchy or heteronomy it purports to oppose. The problem of the avant-garde thus involves the availability of autonomous grounds for judgment and action, which has been the fundamental problem in Western philosophy at least since Plato.

The problem is not — as Berman knows — resolvable by adherence to an impossible relativism, nor by sentimental attachment to an illusory populism nor by a skeptical suspension of judgment itself. Judgment is powerless to suspend itself among the contending positions that determine its possibilities and its structure. Yet Berman's championing of "truth" without reckoning its exclusionary potential, and of "taste" without confronting its regulative normativity leaves unconsidered the problem of distinguishing between the various truths and tastes contending for aesthetic and political preference at any given moment. He seems to imagine that truth and taste, like the avant-garde that speaks for them, can rule the field of contentions while standing apart from it. Yet when truths and tastes must be adjudicated, disinterested judges are notoriously difficult to find.

Post-Modern Conditions and Critical Theory

The ability to ground judgment and to distinguish justice from violence has, of course, been at issue in the long debate between Critical Theory and postmodernism that Habermas began with Lyotard and Foucault and which *Modern Culture and Critical Theory* resumes. In this debate, it is not always easy to decide which contestant has best assumed the legacy of Horkheimer and Adorno that all the disputants claim to share. Berman acknowledges this difficulty in the introduction, where he specifies the "features" that Lyotard's *The Postmodern Condition* and Horkheimer/Adorno's *Dialectic of Enlightenment* share. He notes particularly the concern to relate knowledge to social processes and judgment to political power. In both, Berman acknowledges "the imperialist moment when civilization attempts to enforce its supremacy over the primitive, the backward, the barbarian, when, to cite the Occident's own geographical metaphor, Europe constructs Asia in order to subjugate it" (3-4).

Quite properly, Berman's account of these similarities serves primarily to specify the differences between these thinkers.[3] Yet his argument suggests that

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antagonism may exist not only between Horkheimer/Adorno and Lyotard but in his own position, because he sometimes renders his opponents too neatly opposable by caricaturing their positions. Lyotard is made to champion nostalgic myths of pristine communities suffering endless violence, while Horkheimer/Adorno speak for dialectical reason and progressive enlightenment. Neither text offers unequivocal evidence for such a construction. In both cases, the positions seem more internally split.

Berman himself subverts his own distinctions. As he points out, in Horkheimer/Adorno the alternatives of myth and enlightenment, violence and reason, barbarity and civilization, often entwine. Especially in the analysis of the *Odyssey*, enlightenment seems to perpetuate violence in its very imposition. Berman writes, "the epic which incorporates myth is filled with mythic substance and must repeat the blind violence it thought it had overcome" (8). Yet enlightenment may not only be filled with a mythic substance it has simply failed to overcome; its blindness may consist in its inability to recognize the mythic violence in which it is ineluctably implicated. If this is so, criticizing Lyotard for "reducing practice to the eternal return of an agonistics of power" (6) is not so much unfair as inadequate; and the "fundamental tension between Horkheimer/Adorno and Lyotard" must be other than Berman claims (5).

The "barely articulated hope of redemption" that Berman claims separates Adorno's and Horkheimer's progressive modernism from Lyotard's neoconservative post-modernism seems difficult to detect. It may be true, as Berman says, that "the critique of enlightenment is directed not at the transcendence of myth but at the failure to transcend myth successfully"; it may be that the "problem with progress is that it hasn't progressed, trapped in a constant repetition of the savagery it claims to oppose" (7); and yet, the reasons for these failures may be — like other reifications of avant-garde positions — fundamental to the project of enlightenment as an imposition of enlightened judgments. As Adorno and Horkheimer present it, enlightenment emerges in opposition to myths and imposes itself by struggling against and overcoming them. The claims of reason and the demands of violence may be, at times, difficult to distinguish. Berman, at times, indicates as much: "because myth was already enlightenment, the fascist exhortation to return to myth is duplicitous; because enlightenment reverts to myth, an unbroken liberal or socialist faith in progress will not escape the cycle of violence" (5). Violence is perpetuated in the narrative — be it Homer's,

3. Berman can be crudely tendentious when it suits him. For example, citing Lyotard's observation that general education for undergraduates may be less responsive to current needs than adult eduction on specific topics in societies where technologies and interests change continuously throughout a lifetime, he claims that Lyotard opposes democratic universities in favor of "elite institutes for technical specialists." Lyotard's text will not easily bear this construction. See *The Postmodern Condition: a Report on Knowledge* (Minneapolis: University of Minnesota Press, 1984) pp. 49-50, Berman, pp. 5-6. Berman's misreading of this passage is symptomatic of the deep antagonism that energizes his polemic.

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Adorno/Horkheimer's or Berman's — through which reason appears both in and as the struggle with its other. The epic of reason may be implicated in the mythic violence of the narratives it supplants or sublates.[4] This does not mean that all narratives are equally violent, nor that there is nothing to choose between them. The issue is how to choose and how to justify the choice made.

Like Habermas, Berman flattens Lyotard's argument in a manner not without a violence of its own. Lyotard confronts Berman with the problem of judgment — a problem that has been traditional in modern thought at least since Montaigne (4-5). He finds no universal grounds for unequivocal judgment in Lyotard. Given the proximity of their views, which Berman admits, this threatens the grounds of his own position. The difficulty of finding unquestionable grounds from which reason, uncompromised by and unimplicated in myth and violence, might judge, calls into question the utopian hopes for an emancipatory autonomy that Berman champions. It is on those hopes that Berman tries to ground the distinction between Critical Theory and post-modernism.

To complicate matters further, Berman affects to discover utopian hopes in Lyotard's work as well. He makes these claims at a point where a certain violence invests his prose and mythifies his presentation of his antagonist, indicating some of the tensions in his own position. Lyotard, Berman writes, "claims to demonstrate the obsolescence of enlightenment metanarratives of emancipation, but at the center of the essay, preserved like a mammoth in a glacier, a surprisingly naive version of *Geschichtsphilosophie* starts to defrost. One finds another, yes, three-part account of the history of human knowledge, beginning with the untroubled coherence of the prelapsarian community, engaged in what Lyotard labels as narrative; passing through the alienation and despair wrought by modern science; and concluding with a post-modernity, returning to some of the ancient pleasures of narration freed from an obligatory legitimation . . . Horkheimer/Adorno posit initial violence and conflict; Lyotard dreams of an

4. Foucault, the other antagonist in Berman's polemic against post-modernism, makes a similar point toward the end of "Nietzsche, Genealogy, History," one of the few Foucault works Berman actually cites. There, perhaps having Horkheimer and Adorno in mind, Foucault writes: "The third use of history is the sacrifice of the subject of knowledge. In appearance, or rather, according to the mask it bears, historical consciousness is neutral, devoid of passions, and committed solely to truth. But if it examines itself and if, more generally, it interrogates the various forms of scientific consciousness in its history, it finds that all these forms and transformations are aspects of the will to knowledge: instinct, passion, the inquisitor's devotion, cruel subtlety, and malice. It discovers the violence of a position that sides against those who are happy in their ignorance, against the effective illusions by which humanity protects itself, a position that encourages the dangers of research and delights in disturbing discoveries. The historical analysis of this rancorous will to knowledge reveals that all knowledge rests upon injustice (that there is no right, not even in the act of knowing, to truth or a foundation for truth) and that the instinct for knowledge is malicious (something murderous, opposed to the happiness of mankind)." (162-63). For Foucault, thinking itself rests on the violence I am here attributing to Berman's enlightened vanguard. In this view, thinking is not an autonomous but an implicated act.

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original community" (7). Perhaps Berman forgets that he elsewhere criticizes the endless agonistics of Lyotard's position, which function precisely at the level of narrative itself. (see, for example, pp. 6 and 9) For Lyotard, violence is not just an imposition of the metanarrative upon an original community; it is part of the structure of narration, part of the activity of thinking itself, and therefore constitutive of the communities it characterizes. He is consistently concerned with finding criteria that enable judgments between just and unjust violence both within and between "communities" which are not, in Lyotard's account, simple communalities freed from the question of legitimation. His search for justice may be utopian or even Platonic (it is certainly subject to critical reading in these terms), but not his version of community.[5] Lyotard does not see communities as untroubled or "pristine," as Berman charges, but as places of conflict (8). The language games that define communities are agons of differentiation, and justice is always a potentiality of the field, an aspect of play within the game, not a transcendental ruler of it — despite Lyotard's own attempts to describe what the master game of justice might be.

Ironically, it is Berman who seems subject to a certain utopian nostalgia for a moment when critical judgment dictated discriminations that appeared to rule the field of criticism with olympian detachment — a moment when, e.g., Adorno could announce with fine asperity that after Auschwitz all culture is garbage. At the beginning of his chapter on Foucault, Berman remarks that "it is enlightenment (or some version of it), rather than conservative tradition, that leads to *Auschwitz*" (13). The problem is, as this statement implies, to distinguish between those legacies of enlightenment that justify injustice, and those which do not. The problem, as Lyotard's work indicates, can sometimes be to define injustice, or to prove its existence to those who cannot see it. One crucial aspect of this problem is the absence or unavailability of transcendental norms — modes of thinking beyond the struggles and hierarchies of the present — that could function as universal criteria for judgment.[6] In Hegelian-Marxist terms,

5. This is evident in *The Postmodern Condition* (see pp. 10-11, where Lyotard elaborates the observation that "to speak is to fight," and the agonistics of language central to his thinking). It is more fully developed in two other books, one that appeared before *The Postmodern Condition*, and one that appeared after. See Jean-Francois Lyotard and Jean-Loup Thebaud, *Just Gaming*, trans. Wlad Godzich (Minneapolis: University of Minnesota Press, 1985); and *The Differend: Phrases in Dispute*, trans. Georges Van Den Abbeele (Minneapolis: University of Minnesota, 1988). For a sympathetic critique of the utopian aspect of Lyotard's thinking, see Samuel Weber's "Afterword: Literature — Just Making It," which appears as the afterword to *Just Gaming*, pp. 101-120.

6. It is precisely his attempt to analyze the concept of conflict and justice without reference to transcendental norms that characterizes Lyotard's notion of the "*differend*": "As distinguished from a litigation, a differend [*differend*] would be a case of conflict, between (at least) two parties, that cannot be equitably resolved for lack of a rule of judgment applicable to both arguments. One side's legitimacy does not imply the other's lack of legitimacy. However, applying a single rule of judgment to both in order to settle their *differend* as though it were merely a litigation would wrong (at least) one of them (and

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there is no absolute subjectivity. Berman himself — speaking as the beneficiary of Horkheimer/Adorno — notes this, though he seems unwilling to accept the implications of this aspect of their legacy: "pace Hegel, the subordinated actors attain to no superior knowledge which could guarantee emancipation. For there is no guarantee, as Horkheimer/Adorno and Lyotard would agree . . . . Post-modernism wants to criticize imperialism but refuses to label domination unjust. Horkheimer/Adorno focus on a surplus of language that might overcome the facticity of violence . . . . Hence the double character of Homer's imperialism: the founding text of Western culture, like all cultural texts, is simultaneously a document of barbarism; but documents of barbarism by the alienation of their language articulate criticism as a step toward a future culture" (9). Berman struggles against the implications of his own observations to maintain the identity of progressive enlightenment and emancipatory autonomy. But if there is no guarantee for either master narratives or subordinated actors, there is no guarantee that the critical gesture of violent appropriation that alienates the language of barbarism is a step toward a future utopia rather than a regression into further barbarity. It is not clear that these two movements, these two legacies, are always distinct. The question of justice cannot finally be adjudicated, but it does not stop being a question. Justice remains a matter that must be continuously retried.

Lyotard does not refuse to label domination unjust, though he is interested in the ways in which such a label — while ineluctably necessary — is always in danger of participating in the injustice it decries. Berman, who speaks from a vanguardist position whose shakiness he indicates but is unwilling to analyze, avoids the questions raised by his own statements about Lyotard. It is simply untrue, *pace* Berman, to say that post-modernism — as Lyotard exemplifies it — has no interest in questions of adjudication and domination. As Lyotard defines it, the post-modern moment discovers itself in the necessity of judgment without guarantees that the culture of the critic — like all culture according to Adorno — may not be a license for barbarism as much as a demand for liberation.

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both of them if neither side admits this rule). Damages result from an injury which is inflicted upon the rules of a genre of discourse but which is reparable according to those rules. A wrong results from the fact that the rules of the genre of discourse by which one judges are not those of the judged genre or genres of discourse. The ownership of a literary or artistic work can incur damages (as when the moral rights of the author are assailed); but the very principle that one ought to treat a work as an object of ownership may constitute a wrong (as when it is not recognized that the 'author' is its hostage). The title of this book suggests (through the generic value of the definite article) that a universal rule of judgment between heterogeneous genres is lacking in general." (*The Differend*, p. xi.) It is not the activity of reason itself but the investment in universal rules that separates Lyotard's analysis from that of classical Critical Theory as exemplified by Berman. The importance of these universal rules, as I have suggested above, involves the remediable or unremediable nature of conflict, the ability for parties in a dispute to define and adhere to grounds for settling the dispute. The question of justice in the absence of these grounds is one that cannot be resolved once and for all. Instead, it must be continually reopened and reargued.

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Repressive Hypotheses and Primal Screams

If, as Berman imagines it, Critical Theory projects a utopian view of justice above or beyond the violence of the moment, it also discovers the oppressed beneath or apart from the networks of power and knowledge that constitute society and society's discourse about them. Upon analysis, this vision of the oppressed may turn out to be similarly problematic. To defend this view, Berman must settle accounts with Foucault, whose work has most provocatively unsettled thinking about power, utopia and liberation.

As with Lyotard, Berman notes that on many issues Adorno/Horkheimer and Foucault are remarkably close, and that their closeness defines their essential difference. Here, however, the similarity and the difference between these positions both involve the pessimism Berman claims they share (13-14). He finds the pessimism of the Frankfurt school more limited and better motivated than Foucault's "joyous celebration of homelessness." As he sees it, Foucault's reading of power leaves no room for emancipatory hopes: "Genealogy has no interest in protecting the individual" (15). Citing Foucault's citation of Nietzsche (and little else), Berman accuses Foucault of seeing liberty as nothing but the invention of the ruling class, as just another manifestation of oppressive power. Foucault's pessimism therefore seems absolute. Yet Berman's reading of Foucault's citation of Nietzsche's phrase, "liberty is an invention of the ruling class," may not be the most effective possible interpretation. By tracing liberty's genealogy, Foucault does not dismiss or delimit liberty's relevance. Genealogy does not, as Foucault says elsewhere in this essay, "seek to demonstrate that the past actively exists in the present, that it continues secretly to animate the present." If Foucault were claiming that the aristocratic origins of liberty could be said secretly to contaminate the idea today, Berman's criticism might be just. But this is not Foucault's point. According to Foucault, genealogy seeks "to follow the complex course of descent . . . to identify the accidents, the minute deviations — or conversely the complete reversals — the errors, the false appraisals, and the faulty calculations that gave birth to those things that continue to exist and have value for us; it is the discovery that truth or being do not lie at the roots of what we know and what we are, but the exteriority of accidents."[7] To trace the genealogy of a belief or practice and to evaluate or assess its present significance are different activities, though the latter might have its own genealogical dimension. If, according to Nietzsche, truth may be the sort of error without which life would not be possible, a genealogist might argue that liberty is the sort of belief without which a politics of liberation would not be thinkable. Genealogy questions the status of liberty, not its existence. In Foucault's remark, liberty appears as a part of and not as grounds for or a limit to the problematics of power. As such, it does not necessarily lose its value,

7. "Nietzsche, Genealogy, History" in *Language, Counter-Memory, Practice: Selected Essays and Interviews by Michel Foucault*, ed. by Donald F. Bouchard (Ithaca: Cornell University Press, 1977), p. 146.

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though its value requires specific interpretive assessments of the discursive instances in which it appears.

A belief in power and in the informing power of interpretation may itself be the sort of error without which genealogical analysis in the mode of Nietzsche and Foucault would not be possible. Yet this observation does not settle the question of the significance of genealogy today. As Foucault himself later indicates, sounding for the moment a bit like Lyotard talking about language games and Horkheimer/Adorno, in Berman's account of them, alienating the discourse of barbarism: "If interpretation were the slow exposure of the meaning hidden in an origin, then only metaphysics could interpret the development of humanity. But if interpretation is the violent or surreptitious appropriation of a system of rules, which in itself has no essential meaning, in order to impose a direction, to bend it to a new will, to force its participation in a different game, and to subject it to secondary rules, then the development of humanity is a series of interpretations. The role of genealogy is to record its history: the history of morals, ideals, and metaphysical concepts, the history of the concept of liberty or of the ascetic life; as they stand for the emergence of different interpretations, they must be made to appear as events on the stage of historical process."[8]

To say that a text or phenomena has no essential meaning is not to say that it has no meaning at all. Foucault sees meaning as situated rather than transcendent. A crucial aspect of meaning's situation, in this view, is the interpretive intervention of the genealogist, which deforms or reformulates the series of interpretations that "appear as events on the stage of historical process." Thus, if liberty may be said to be an invention of the ruling class, it may not be said to be meaningless, nor may it be said to be unavailable for meanings and uses other than those of its inventors.

This view of interpretation's informative and creative power reappears in Foucault's critique of the repressive hypothesis in his last major work, *History of Sexuality*. This view of power seems more unsettling for any projected politics of liberation than the reading of liberty and the claims made for genealogy in the essay on Nietzsche. This late formulation suggests a shift from the view of power as oppressive — still active in *Discipline and Punish* and other major works — to an insistence on power as productive. Foucault's identification of power, knowledge, and pleasure implicates the analysts directly in the machinations of society's discursive machinery that they would contest. It is this aspect of Foucault's work, rather than genealogy itself, that Berman might more usefully have addressed to specify the distance between Foucault's work and the Frankfurt School's legacy.[9]

Foucault's linking of power and knowledge as productive rather than

8. "Nietzsche, Genealogy, History," *op. cit.*, pp. 151-52.

9. For a sympathetic and nuanced critique of Foucault's analysis of the repressive and its implications see Rebecca Comay, "Excavating the Repressive Hypothesis," *Telos* 67 (Spring 1986), 111-120.

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repressive forces reposes the question of autonomy. For it may not be true — as Berman claims — that denying the possibility of a position outside of power means that there can be no critique of power. Such a view must see power as an abstract, homogenous monolith without inconsistencies or points of contestation within the structures it produces. Such power would be, paradoxically, without objects upon which to work its dominating and productive force. Some have accused Foucault of advancing such a view of power, and the point is certainly arguable and interesting. Berman, however, says little about the problem of power in Foucault. Instead, he attempts to reclaim a pre-critical subjectivity to counteract Foucault's critique of humanism. He imagines a subjectivity standing apart from social processes and history and representing the potential autonomy of the liberated individual: "It goes without saying [Berman asserts] that the Frankfurt School does not surrender the aspect of the Marxist legacy that criticizes social stratification, i.e., that to which the label 'class society' refers. Characteristically, Critical Theory renames the issue "heteronomy," so as not to obscure particularity through an invocation of class similarities, but still retain a loyalty to the political project of achieving a genuine self-determination by dismantling the structures of domination, a project definitively rejected by Nietzsche's aristocratic pessimism. Consequently, for Adorno, 'education for autonomy' can be a serious political goal; it is not a matter of a class vanguard seizing state power (I add: thank goodness), but it is the corollary radical move. For critical theory, autonomy as liberty is not just an 'invention of the ruling classes'." (14-15)

Whether class society and heteronomy are equivalent terms, whether Marx's theory of class is the same as social stratification, and whether such assertions constitute betrayal of or loyalty to the legacy of Western Marxism is not the issue. In this passage, Berman struggles to gain some distance from the difficult, unsettling questions of actual social transformation and political struggle. Eschewing aristocratic pessimism, he thanks goodness that liberation can shed the entanglements of class conflict and state power that have made Marxism vulgar. Luckily, for elite intellectuals like Berman, if liberation no longer involves a vanguard class, it still requires an avant-garde of progressive educators.

What would this education for autonomy be and who would administer it? What does autonomy mean if it must be learned? Berman must feel himself more qualified than Bennett to be the minister of autonomous culture, but with a different legacy to reclaim. But what legacy? If all culture under capitalism, as Berman elsewhere argues, can only reflect the aleatory influence of commodity relations (see, e.g., pp. 55-69), then what could the curriculum for autonomy and self-determination be? In what might this autonomy be grounded — the soul? the will? reason? Which of these traditional grounds of autonomy are not constituted or reified, produced or deformed, invented or coopted by the culture Berman opposes? Does this implication of the grounds for contending in the field of contention make opposition an empty gesture?

Berman does not deal with the essential questions he raises because, as with

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the avant-garde and justice, he believes the answer is clear. Once again, however, he begs the question. He is not even certain he can claim Adorno as an ally in his attempt to ground political discourse in the autonomy of the subject: "Of course [Berman writes] identity is itself a problematic notion for Adorno, since it is always socially mediated and, moreover, mediated by an advanced capitalist society that is heteronomous and itself thoroughly mediated. I bracket these matters here, however, in order to address a different issue: the inaccessibility of identity except via the materiality of its appearance" (17). It is this critique of self-identity that Berman finds within Critical Theory's own assumptions and texts which he tries to distance, project, domesticate and deny. It is part of the legacy he would like to refuse. And yet, this may be Critical Theory's most productive insight, one which makes the distance between Foucault and Adorno that Berman attempts to open more difficult to chart. Berman's focus on the "ironic simulations of presence" (17) that are the "materiality of its appearance" and the only manifestations of the subject possible does not bracket but represents the very problem of socially mediated subjectivity that Adorno — and Foucault — discuss and that Berman wants to avoid.

Once the mediation of identity is admitted as a primary consideration, the possibility of imagining or grounding the autonomy of the subject becomes fundamentally incoherent and the defense of liberation must seek other grounds. The lineaments of the subject become objects for interpretive construction rather than unmediated recognition, and as such they are subject to the genealogies of power and knowledge Foucault and Horkheimer/Adorno sought to analyze. In Berman's own words: "Identity is present only in the appearance of the mask, which hides identity; only in the effacement of any original features. Indeed an invocation of such original features makes little sense, since they are accessible only in the displacement of the markings of the mask, that is to say that the mask, inscribed with the traits of physiognomy, is always subsequent to an inaccessible origin. The temporal deferral that precedes the mask indicates therefore how the mask is always a death mask, presenting the face of death, Benjamin's *facies hippocratica*, where the melancholy traces of ruination come to the fore" (18-19). If the original face is "always . . . an inaccessible origin," and identity can only be interpreted through the traces of oppression that mask as well as reveal subjectivity, then appeals to an autonomous subject can never ground interpretation for it is interpretation that produces identity, autonomy and subjectivity as part of its engagement with power.

A melancholy nostalgia akin to Rousseau's mournful meditations, a longing for subjectivity as the utopia of theory invests Berman's argument, blinding him to the implications of his own position. At a crucial point, he reintroduces the noble savage as a primal scream: "The primal sceam of Critical Theory is one of force as domination and a simultaneous suffering that names it — with the cry, the magic word, the concept — to make it go away . . . The point is . . . that extraordinarily diverse human activities, from the work of art to the grimace of pain, record the experience of violence and suffering, and by recording it point it

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out and thereby point to its end . . . . The suffering creature, its mask distorted by pain, gives expression, now as a subject, to the suffering and calls the pain into question. It is not at all the ruling classes who invent liberty but the victim who is able to thwart or at least to articulate the wish to thwart the destiny of matter. Thwart: the German is *durchkreuzen*, cross out; freedom is heteronomy under erasure . . . . And this *x* marks the spot of the crucial distinction between critical theory and genealogy, prior, I suggest, to the many secondary issues such as specificity, consensus, etc.: is liberty the 'invention of the ruling classes,' or is freedom the mournful expression of the suffering creature?" (20-21).

One might question the political implications of substituting the metaphysical and sentimental appeal of suffering creatures (no longer even human?) at war with the fate of matter for historically determined class and social interests. But does this "x" actually differentiate genealogy and Critical Theory, or does it mark a place of difficult crossing between them? The mask as an expression of suffering does not escape the political, historical, and social economy of representation and dissimulation, of reading and displacement, of oppression and imposition it is meant to challenge. Rather, in Berman's own account, it appears as another aspect of power.

To ground politics in suffering is tricky business, especially for a critical theorist. As Foucault's own analysis of public executions in *Discipline and Punish* indicates, the spectacle of suffering and the experience of pain are not apart from but inscribed within the markings and maskings of social and political significance. These compromise any attempt to take suffering itself as a ground for criticism.[10] In various ways, such a grounding has been — from Adam Smith's *Theory of the Moral Sentiments* to Richard Rorty's pragmatic liberalism — not a basis for unmasking the truth but a means of disguising power relations and injustice. For the significance of suffering, as a moment's critical reflection may reveal, can never be assumed to be self-evident even to the subject who experiences it. Berman's own argument indicates this. He implies that today's commodity culture masks from its victims the true nature of their own pain; that the post-modern subject is manipulated, administered, dominated and controlled by a culture industry that conceals the subject's true suffering from itself. The pain of the post-modern subject must therefore be read off from and read into these subjects by the theorist who disfigures the lineaments of consumer culture's happy face. This mask does not only confront the observer but also, according to the theorist, confronts the sufferer as well.

Within a socially constructed identity there can be no unmediated or unmasked

10. For an analysis in different terms of the manner in which suffering becomes part of a general problematic of societal representation and decorum, rather than a ground for ethics or politics, see David Marshall's analysis of Adam Smith's *Theory of the Moral Sentiments* in *The Figure of Theater: Shaftesbury, Defoe, Adam Smith, and George Eliot* (New York: Columbia University Press, 1986) and his account of suffering and representation in *The Surprising Effects of Sympathy: Marivaux, Diderot, Rousseau, and Mary Shelley* (Chicago: Chicago University Press, 1988), esp. pp. 82 and 242 n. 25.

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self-consciousness. The theorist must appropriate the prerogatives of power and prescription that traditionally adhere to the political and aesthetic avant-garde. The relation of this avant-garde to society is not, then, one of autonomy — critical or aesthetic — but of imposition, of reading of and as repression, interpretation as the expression of power. For nothing guarantees the critical consciousness of the analyst beneath the masking force of the various lines and lineaments of power that constitute one's own subjectivity as well as one's object.

The point is not to condemn Berman in particular, nor Critical Theory in general, for the power play implicit in critical analysis. Such a power play seems ineluctably part of any reflection on politics that struggles with power and oppression. The point is that these critical agonies cannot be grounded in the sentimental self-evidence of pain. There is no autonomous or transparent position available to the theorist or artist or sufferer from which to simply see through the social mask to the presocial presence that putatively lies beneath it.

One must read the traces of conflict within the repressive representations of culture, remembering that all representation may involve repression, all subjectivity may entail suffering, and that the necessity of adjudicating between the kinds, degrees and significance of the sufferings and their subjects is the awful responsibility critical theorists can neither fulfill nor evade. To argue in this vein is not to fall into the cultural relativism Berman rightly derides, but to recognize that without unmediated access to the figure behind the mask, without access to a grounding in an absolute, interpretation and misrepresentation are too difficult to distinguish for a critic to be comfortable with any distinction Critical Theory might make.

If, as I have been arguing, Berman's own account of identity and liberty in the Frankfurt School, despite his efforts to resist the tendency, keeps confusing the masks of Foucault and Adorno, this may help to explain why his description of Foucault becomes an increasingly grotesque caricature of the writer it is supposed to represent. What motivates Berman's attack may be the anxious realization that the distance between a reading and a deriding, between a politics of liberation and the impositions of power, between criticism and its objects, may never be clear cut enough nor subjectivity itself autonomous enough to offer any comfort for critics at all.

Legacies and Legalism

Modern Culture and Critical Theory engages the issues that have furnished grounds for dispute between Critical Theory and post-modernism in recent years: the grounds or groundlessness of critical judgment, the relation of critical subjectivity to normative institutions, the availability of autonomy. The legacy Berman claims from Horkheimer/Adorno offers to Critical Theory a dream of autonomy, however distant. In this dream at least the intellectual can take pleasure in seeing his own power mirrored in the critical act of his own negations. The question is whether such critical narcissism — such an uncritical self-reflection — really amounts to true critical subjectivity or viable critical thought at

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all. Is the belief in autonomy the legacy or the liability of Critical Theory?

There may be more at stake in the confrontation between post-structuralism and Critical Theory than yet another example of what Martin Jay, referring to other debates, has called "the narcissism of small differences."[11] In *Discipline and Punish*, in a passage that may reflect directly or by opposition some version of a legacy from Horkheimer and Adorno, Foucault writes: "Perhaps, too, we should abandon a whole tradition that allows us to imagine that knowledge can exist only where the power relations are suspended and that knowledge can develop only outside its injunctions, its demands and its interests. Perhaps we should abandon the belief that power makes mad and that, by the same token, the renunciation of power is one of the conditions of knowledge. We should admit rather that power produces knowledge (and not simply by encouraging it because it serves power or by applying it because it is useful); that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations. These 'power-knowledge relations' are to be analyzed, therefore, not on the basis of a subject of knowledge who is or is not free in relation to the power system, but, on the contrary, the subject who knows, the objects to be known and the modalities of knowledge must be regarded as so many effects of these fundamental implications of power-knowledge and their historical transformations."[12]

If no autonomous critical subject can exist because no subjectivity can be discovered that is not already constituted by the power-inflected discourses that constitute the world, the subject's position in it, and the critic's knowledge of it, what is left for criticism to do? A short answer would hold that criticism must play the game of power that contests both itself and its objects. If there is no critical subjectivity apart from the structuring force of power, this does not mean that power is without opportunities for, and the necessity of, contestation. Power-knowledge is knowledge in and of the processes of struggle in and with the possible domains of knowledge.

It may be in its own willingness to recognize itself as part of the play of power that Critical Theory will either succeed in achieving a legacy to transmit or concede its status as a dead letter. Berman's uncritical use of Critical Theory seems in danger of itself becoming mythological in precisely the sense that Adorno gives the term in *Negative Dialectics*. The passage occurs at the point where the relation of philosophy to language is in question: "Mythology is that which never changes, ultimately diluted to a formal legality of thought. To want substance in cognition is to want a utopia. It is this consciousness of possibility that sticks to the concrete, the undisfigured. Utopia is blocked off

11. Martin Jay, *Marxism and Totality: The Adventures of a Concept from Lukács to Habermas* (Berkeley: University of California Press, 1984), p. 10.

12. *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1979), pp. 27-28.

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by possibility, never by immediate reality; this is why it seems abstract in the midst of extant things. The inextinguishable color comes from nonbeing. Thought is its servant, a piece of existence extending — however negatively — to that which is not. The utmost distance alone would be proximity; philosophy is the prism in which its color is caught" (56-57).

This passage might offer a legacy to a variety of interpretations. "To want substance in cognition is to want a Utopia" may authorize the adherence to nostalgic remembrances of a hoped-for future Berman posits, but it may also authorize thinking as an ineluctable dialectic of desire in which the creation of substantial thought requires the attempt to realize precisely what one does not and cannot have. Utopia may not be the phantasmatic object needed to stabilize or systematize criticism in the mythical hope of repossessing a lost kingdom. It might be the perpetually precipitating activity of thought, which in the process of its denegations lends color to possibilities by transforming both knowledge and itself. The legacy this utopia authorizes would always have to reconfront the question of its own legality, reopening the borders and the excluded territories of its own desires. What may be possessed in this legacy is an endless agon between dispossession and repossession, inheriting and being disinherited, being written into and writing oneself out of the will of the past and the law. Whether this be a legacy of pessimism or optimism, it can never be a legality to which one merely resigns. And finally, it is Berman's self-resigning to Critical Theory as a formal legality of thought — and his enactment of Critical Theory as a violent myth — that I find especially problematic in his book and in his polemics with Lyotard and Foucault.

John Michael

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Packaging Fog

Douglas Kellner, *Jean Baudrillard: From Marxism to Postmodernism and Beyond* (Stanford: Stanford University Press, 1989), 246 pp.

The French have monopolized the market for marginal studies. Film criticism, feminism, literary theory and cultural studies are now borne aloft by translations of Irigary, Cixous, Kristeva, Barthes, Sollers, Metz, Deleuze, not to mention the lead team of Derrida and Foucault, all of whose students are now trained to penetrate and mimic. Social amnesia has mostly removed the names of the last French invasion, running roughly from Sartre through Merleau-Ponty to Althusser. What remains, however, is the significant fact that the only book in philosophy found in any American airport kiosk is Sartre's *Being and Nothingness*, which has also become, in the movies for example, an icon for identifying intellectuals because it is large and forbiddingly titled. But that previous generation, including perhaps French films and film-makers such as Godard, was itself just another wave in a periodic invasion that may have begun in earnest with Tocqueville, or perhaps more practically with Lafayette, but certainly with the contacts between France and the US through Paine and Franklin, the translation of the Declaration of Independence in 1778 by La Rochefoucauld, and the intellectual influence of Montesquieu on Jefferson and Madison. With Baudrillard, unfortunately, we may be witnessing a burlesque of this strange intellectual trade imbalance. The French have never been able to produce a car that any American, save the poor fool who is a sucker for a French accent and whose brother is an auto mechanic, would be caught dead in (but frequently have been). Yet they learned a secret about cornering the market in intellectual imports; American intellectuals remain perpetually afraid that they have missed the boat.

In this spirit Baudrillard has refined this appeal into a largely inexplicable career. Though he has remained a somewhat minor and ignored figure in France, he has a good chance of adding his name to the above list and perhaps displacing Sartre as America's icon of intellectual obscurity. Better than that, he claims to love America, though we know these French intellectuals are always being ironic. This summary of his work by Douglas Kellner appears as Volume 3 in a series called "Key Contemporary Thinkers," where he is proceeded by volumes on Gadamer and Quine. Though I doubt he would take it as a compliment, it certainly puts Baudrillard in with some strange bedfellows.

Like many current French theorists, Baudrillard approaches his work in a style which is literary, aphoristic, wholly free from the burden of empirical evidence, and provocative. Being provocative is clearly the most important trait.

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His strategy has been to attack what he sees as the dominant, unquestioned consensus in academic theory at any given moment. For this reason he has found himself attacking Marxism, feminism, communication theory, productivism, and theories of alienation. However, unlike the New Philosophers (a fad that if you blinked you missed), Baudrillard has no particular political agenda to promote. Though Kellner spends some time worrying, in mock concerned tones, that Baudrillard's politics may be reactionary, conservative, and aristocratic, it is a blunt reader who does not see Baudrillard making every effort to defeat such expectations.

Baudrillard's career began with Barthesian inspired studies of consumption and commercial objects. The effort was to see them as codes, as languages, which inscribed and constructed the subjects who consumed them. This approach led him to some fruitful criticisms of traditional Marxist theories. Specifically, he analyzed the privileging of production over consumption in Marxist anthropology, as well as Marx's own inadequate analysis of use value, as revealed in his best collection of essays: *For a Critique of the Political Economy of Signs*. He noted the way in which Marxist critics engage in a kind of ethical attack on consumerism, and this lead him into a strategy of reversing such ethical and political judgements. For example, if radical theory condemns the silent majority Baudrillard shows how the silent majority is actually a radical and effective critical strategy toward commercial culture. If radical critics attack the passivity and political apathy of "couch-potatoes" in modern consumer society, Baudrillard shows how what he calls the "object-strategy," namely resistance through pretending to be a thing, is the only effective opposition left to the masses.

Baudrillard has extended these kinds of ironic reversals and twists in his discussions of why we should privilege seduction over sex, symbolic exchange over equal exchange, fashion over utility. He values appearance over depth (in the words of the first proponent of this style, Oscar Wilde, "appearances are everything"), artifice over nature, simulation over authenticity, pastiche over system. I suppose a discussion of Baudrillard could be the occasion for a confrontation with this whole new set of theoretical strategies, which are now taking over literary theory, theology, and cultural criticism (under the name post-modernism).

If that is the case, do not look to this book by Kellner as a contribution to such a debate or assessment. It is a laborious, lugubrious, interminable expository ramble. Instead of grouping the material around themes or central topics, Kellner's innovative organizational scheme is chronological order; the synopses are repetitious and the criticisms often *ad hoc*. The major critical point is that Baudrillard is not a Marxist, leftist, or a critic of capitalism, imperialism, or commercial culture. This should not come as a great surprise since Baudrillard repeatedly claims with some pride to be none of the above.

"Consequently I would argue that Baudrillard's attacks on Marx and Freud are too undialectical and denunciatory, and that they often fail to extract or properly valorize what might still be valuable" (131). This sentence is a perfect example of many that litter Kellner's text. He says that Baudrillard's "attacks"

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are too "denunciatory." The invented word "denunciatory" apparently means denouncing something, i.e. attacking it. Thus "denunciatory" is another clumsy way of saying that Baudrillard "attacks" Marx and Freud. Hence Kellner complains that Baudrillard's attacks on Marx and Freud are really "attacks." Since Baudrillard rejects Marx's theoretical approach, including dialectics, as is repeatedly made clear, does it not then follow trivially that he will be "undialectical?" Thus "undialectical" is another way to say Baudrillard is not a Marxist, or he rejects the Marxist approach, or he attacks Marx. So Kellner has further told us that in attacking Marx, Baudrillard is in fact "attacking" Marx. Finally, Baudrillard does not "valorize" Marx and Freud, or extract what is still valuable in their texts, but in fact attacks them, criticizes them, even rejects them. Thus Baudrillard is to be criticized further for drawing from his attack on Marx that he does not "valorize" Marx. What we have not learned from this pointless exercise of padding is why Baudrillard's criticisms are inadequate, if they are, or *why* it is wrong to be undialectical, or to denounce, or to not valorize thinkers like Marx and Freud. These are the wordy but empty passing shots of someone who has no particular argument or analysis to offer. I make this comment not because I think there is little to criticize in Baudrillard, but rather because his particular brand of theoretical play and irony requires a critic who is willing to make the effort to argue with and analyze what is claimed in these works.

In lieu of making some coherent argument about Baudrillard's theoretical work or historical significance, Kellner launches into his own brand of pseudo-theory. He has a good deal to say about what he calls Baudrillard's "metaphysical imaginary" and how it leads him to sexism and racism, and then how the metaphysical imaginary is also "what might be called a political imaginary." According to Kellner, ideologies crystalize into "political imaginaries which are ways of seeing and interpreting events and issues which individuals deal with in everyday life." If this point sounds suspiciously like the original term ideology we may have one more case of Kellner's endless skill at saying the same thing in many different words.

Though ideology is left behind, Kellner does suggest that the metaphysical imaginary is "esoteric," whereas a political imaginary is "widespread." There are endless pages of this kind of mindless imitation of theoretical research. It is often in the service of a politics whose flavor can be tasted in Kellner's criticism of Baudrillard's description of California as a "realized utopia." "Baudrillard comes to California, and he sees the natural splendor of the desert and the eccentricities of its joggers, intellectuals, yuppies, and freeway and media culture. His California is lily-white, Reaganized and yuppified. There are no migrant farm-workers, no Chicano barrios, no Central American refugees, no Vietnamese refugees or Asians, not even any blacks" (172). Kellner then notes that Baudrillard connects his assessment of California to a discussion of "Reagan's smile" as a kind of fetishism of the sign that signals "This country is good, I am good, we are the best." Apparently now the irony is too thick for even the dull-eyed Kellner to miss and he grants that Baudrillard may be making a critical

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point about the commercialization of American politics and culture — a position Kellner finds comfortable. But then he demurs, since he knows that his job is to be a critic (after all, he dedicates the book to Adorno, an honor one can do little about when one is dead) and he offers the devastating reply that all of these problems raised by Baudrillard are finally "very complicated." Kellner tops off this banal point with one of those wonderful invented words that capture his prose style; "Yet to reduce Reaganism to *dentificial* effects (emphasis added) is to miss many aspects of this complex phenomenon" (172).

This book leaves one with the overview of Baudrillard as a figure whose intellectual career seems to have been a waste of effort and potential insight in a fairly empty and ludicrous effort to bare one's teeth for the zoo of Parisian intellectual posturing. But to have only this pointless effort displayed in a book, whose embarrassing attempts at critical analysis set one's teeth on edge, is all the more depressing.

Robert D'Amico

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